17-463

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 185.

EDGAR A. BALDWIN AND CHARLES E. VAN PELT,
PLAINTIFFS IN ERROR,

vs.

FRANCIS G. STARKS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

**FILED FEBRUARY 21, 1880.**

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Nebraska, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Nebraska before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Francis G. Starks, plaintiff in the said cause, and Edgar A. Baldwin and Charles E. Van Pelt, defendants in the said cause, wherein was drawn in question the validity of the statutes of the United relating to the pre-emption and homestead of the public lands of the United States, and the right, title, and ownership of the said Edgar A. Baldwin and Charles E. Van Pelt to the northwest quarter of the northeast quarter and the north half of the northwest quarter of section No. 19, town. 10, range 7 (seven) E. 6 p. m., in Lancaster County, Nebraska, under a patent from the United States issued under the pre-emption and homestead laws of the United States under and by the authority of said laws and the acts and decisions of the Commissioner of the General Land Office of the United States & the Secretary of the Interior, and the decision was against their validity and the said title; and wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in

2 favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Edgar A. Baldwin and the said Charles E. Van Pelt, defendants in the said cause in the said supreme court of the State of Nebraska, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said

Supreme Court, the 27th day of January, in the year of our Lord one thousand eight hundred and eighty.

Issued Jan. 27, 1880.

WATSON B. SMITH,
*Clerk of the Circuit Court of the United States for the District of Nebraska.*

Allowed by—

SAMUEL MAXWELL,
*Chief Justice of the Supreme Court of the State of Nebraska.*

3 The United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, wherein Edgar A. Baldwin and Charles E. Van Pelt are plaintiffs in error and you (Francis G. Starks) are defendant in error, to show cause, if any there be, why the judgment and decree rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Maxwell, chief justice of the supreme court of the State of Nebraska, this 27th day of January, in the year of our Lord one thousand eight hundred and eighty.

SAMUEL MAXWELL,
*Chief Justice of the Supreme Court of the State of Nebraska.*

On this 27th day of January, A. D. 1880, personally appeared Geo. B. Adams before me, the subscriber, Guy A. Brown, and makes oath that he delivered a true copy of the within citation to Geo. W. Lowby, attorney of record of the said Francis G. Starks, defendant in error.

GEO. B. ADAMS.

GUY A. BROWN,
*Clerk of the Supreme Court of Nebraska.*

4 (Copy.)

The United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, wherein Edgar A. Baldwin and Charles D. Van Pelt are plaintiffs in error and you (Francis G. Starks) are defendant in error, to show cause, if any there be, why the judgment and decree rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Maxwell, chief justice of the supreme court of the State of Nebraska, this 27th day of January, in the year of our Lord one thousand eight hundred and eighty.

SAMUEL MAXWELL,
*Chief Justice of the Supreme Court of the State of Nebraska.*

On this 17th day of January, A. D. 1880, personally appeared Geo. B. Adams before me, the subscriber, Geo. C. Newman, and makes oath that he delivered a true copy of the within original citation to W. F. Chapin on the 16th day of February, A. D. 1880, he being one of the
5 attorneys of record of the said Francis G. Starks above named.

GEO. B. ADAMS.

[SEAL.] GEO. C. NEWMAN,
*Notary Public.*

Baldwin & Van Pelt vs. Starks.

6 To the honorable Samuel Maxwell, chief justice of the supreme court of the State of Nebraska:

Your petitioners, Edgar A. Baldwin and Charles E. Van Pelt, respectfully petition and show to your honor that heretofore, to wit, at the January term, A. D. 1878, of the supreme court of the State of Nebraska, to wit, on the 8th day of February, A. D. 1878, of said term, in a case tried and determined in said court, in which Francis G. Starks was plaintiff, and Edgar A. Baldwin and Charles E. Van Pelt, your petitioners, were defendants, a judgment and decree was rendered therein in favor of the said Francis G. Starks and against your petitioners.

That in said suit there was drawn in question the validity of statute of the United States relating to pre-emption of the public lands and the validity of the statute of the United States relating to soldiers' homesteads on the public lands of the United States, and the validity of the acts, determinations, and decisions of the Commissioner of the General Land Office
7 of the United States relating to the public lands, and the authority exercised by the said Commissioner of the General Land Office of the United States and the Secretary of the Interior of the United States under the statutes of the United States relating to the public lands; and there was drawn in question the right, title, and ownership of your petitioners to the northwest quarter of the northeast quarter and the north half of the northwest quarter of section No. 19, town ten (10) north, range 7 east 6 p. m., in Lancaster County, Nebraska, under the said pre-emption law of the United States and under the said soldiers' homestead law of the United States, and under the said construction, acts, decisions, and authority claimed and exercised by the said Commissioner of the General Land Office of the United States and the Secretary of the Interior of the United States under the laws of the United States; and the said judgment, decree, and decision of the said supreme court of the State of Nebraska was against your said petitioners' right, title, privilege, and claim so specially set up under the said pre-emption laws of the United States and under the
8 said soldiers' homestead laws of the United States, and against the validity of a patent from the United States to your petitioner Charles E. Van Pelt, under the said laws of the United States, to the said lands aforesaid, and against the claim, title, and right of your petitioners under the acts of the said Commissioner of the General Land Office of the United States and the Secretary of the Interior of the United States under the laws of the United States.

And your petitioners pray an allowance of a writ error to the Supreme Court of the United States in the cause, directed to said supreme court of

the State of Nebraska, and a citation to said Francis G. Starks, in conformity to the statute in such case made and provided; and your petitioner' will ever pray, &c.

LAMB, BILLINGSLEY & LAMBERTSON, &
MASON & WHEEDON, *Att'ys for Petitioners.*

9 Supreme Court of Nebraska, January term, 1878.

Be it remembered, that at a term of the supreme court of the State of Nebraska, begun and held at Lincoln, on the 1st day of January, A. D. 1878.

Present, the Hon. Samuel Maxwell, chief justice; George D. Lake, Amasa Cobb, judges; Guy A. Brown, clerk, the following among other proceedings were had and done in said court, and entered of record, to wit:

FRANCIS G. STARK, APPELLANT
*v.*
EDGAR A. BALDWIN AND CHARLES E. VAN PELT, appellees.

On the 28th day of April, A. D. 1877, there was filed in the clerk's office of said supreme court a transcript in the above entitled cause, which transcript is in the words and figures following, to wit:

10 Pleas before the Hon. Stephen B. Pound, judge of the district court of the second judicial district of Nebraska, held within and for the county of Lancaster, State aforesaid, at a term of said court begun and held in the city of Lincoln, in said county and State, on the 7th day of February, A. D. 1876.

Present, Hon. S. B. Pound, judge in a case then pending, wherein Francis G. Stark was plaintiff and Edgar A. Baldwin et al. were defendants. Among other proceedings the following were had and done, to wit:

Be it remembered, that heretofore, to wit, on the times hereinafter mentioned the following papers were filed in the office of the clerk of the district court, and the following proceedings had and done in said court in the above entitled cause, to wit:

*Petition and precipe.*

In the district court of the 2d judicial district in and for Lancaster County, Nebraska.

FRANCIS G. STARKS, PLAINTIFF
*vs.*
EDGAR A. BALDWIN, DEFENDANT. } Petition in equity.

The said Francis G. Starks, plaintiff, complains of Edgar A. Baldwin, defendant, and complaining says that he is a resident of the county
11 of Lancaster and State of Nebraska; that being the head of a family and a citizen of the United States, and never having en-

joyed the right of pre-empting any portion of the public lands of the United States under any of the laws thereof, and not being the proprietor of three hundred and twenty acres of land in any State or Territory of the United States, and not having quit or abandoned his own land to reside on the public lands, did, prior to the 12th day of July, 1866, make in person a settlement upon certain lands and premises in the said county of Lancaster, known and described as follows, to wit:

The northwest quarter of the northeast quarter, and the north half of the northwest quarter of section 19, township 10, range 7 east of the 6th principal meridian and thence to this day has, in connection with his family, inhabited and improved the same, and erected thereon a dwelling house, as is hereinafter stated, and the plaintiff avers that the lands and premises above described were not in any manner or for any purpose reserved by the Government of the United States, nor included within the limits of an incorporated town, nor selected for a city or town, nor selected, nor occupied for the purposes of trade, nor were any known salines or mines situated thereon.

12 And the plaintiff avers that he is over the age of 64 years, in very poor health, and has been for several years, being afflicted with paralysis, and in very limited circumstances financially, and, desirous of making a home for himself and his aged wife, he made the aforesaid settlement, and in pursuance thereof he did, on or about the 1st day of March, 1867, erect on said premises a dug-out about the size of 12 feet by 14 feet with door and windows, in which said dug-out he and his said wife resided until the completion of the house hereinafter mentioned; that afterwards, to wit, on or about the month of June, 1870, he erected a good substantial frame dwelling house, 12 feet by 14 feet, one story high, and attached thereto a kitchen 10 feet by 12 feet, built of lumber, one story high, said house & kitchen having three doors and three windows, and cost and was of the value of $150.

That immediately upon the completion of the aforesaid dwelling the plaintiff moved from said dugout into the same, and has resided therein to this day. That afterwards, to wit, on or about the 1st day of June, 1872, he sunk a good, substancial well on said premises, at a cost of about $40; and the plaintiff further avers that he plowed and cultivated, and had in a good state of cultivation, about 28 acres of said land, upon

13 which he had raised corn, wheat, & oats, prior to the 10th day of May, 1871, and upon which numerous trees and shrubs were then growing, which had been planted and cultivated by his own hands, and that he has until the present time cultivated and improved said premises to the extent of his health and pecuniary ability, thereby opening up upon the public lands a nice little home and farm for himself and wife.

And the plaintiff avers that on the 17th day of June, 1870, he tendered his declaratory statement to the register of the land office for the Lincoln land district, in this State, that being the district in which said lands & premises was situated, a written statement, & describing the aforesaid lands & premises, & declaring therein the plaintiff's intention to claim said lands under the provisions of the act of Congress of the United States entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved September 4th, 1841, claiming his settlement thereon to be on and from the month of June, 1864; and

the plaintiff further avers that on the aforesaid 17th day of June, 1870, and after tendering the aforesaid declaratory statement to said register, the said plaintiff offered to prove up said land, and did take the oath prescribed by law in that behalf, and proved to the satisfac-
14 tion of the register and receiver of the aforesaid land office his settlement, continued residence, improvements, and cultivation of said premises in the manner and form as required by law, as well as his qualifications as a pre-emptor, and thereupon offered to pay the price prescribed by law for said lands. And the plaintiff avers that said officers at said land office refused to grant him a pre-em'tion filing on said land, but sent the said declaratory statement, together with the aforesaid proof settlement, continued residence, improvements, and cultivation, as well as this plaintiff's qualifications as a pre-emptor, to the Commissioner of the General Land Office for his decision, and asking that said plaintiff be allowed to enter the same under said act of Congress last aforesaid. And plaintiff further avers that the aforesaid Commissioner of the General Land Office, by his letter of July 8th, 1870, decided that said plaintiff was not entitled to pre-empt said land, for the reason that, being an old section and within the limits of the Burlington & Missouri River Railroad grant, upon the cancellation of homestead entry No. 288, taken June 14th, 1864, and cancelled July 12th, 1866, the said lands reverted to the said railroad company, and not to the Government of the United States.
15 And the plaintiff further avers that on the 23d day of August, 1870, one Charles E. Van Pelt tendered his declaratory statement to the receiver of the aforesaid Lincoln land office, alleging his settlement on the day last aforesaid and asking to pre-empt to the aforesaid land, which was refused by the aforesaid receiver on the ground that the said lands reverted to the Burlington & Missouri River Railroad Company, from whose decision the said Charles E. Van Pelt appealed to the Commissioner of the General Land Office.

And the plaintiff further avers that on the 10th day of May, 1871, a letter was received by the register & receiver of the aforesaid Lincoln land office, dated May 2d, 1871, from the Commissioner of the General Land Office, stating that the honorable Secretary of the Interior had, on the 28th day of April last, decided, in the case of S. M. Boyd v. The Burlington and Missouri River Railroad Company, that lands situated like the lands in the controversy reverted to the government and not to the railroad company, and were subject to be taken either under the homestead or pre-emption laws of the United States. That on the said 10th day of May aforesaid the said Charles E. Van Pelt obtained a soldiers homestead on the aforesaid lands, and the plaintiff, twelve days thereafter, tendered to the register
16 his declaratory statement for the same, alleging his settlement June 20th, 1870, which was received by said register and a pre-emption filing given this plaintiff. That on the 10th day of June, 1871, this plaintiff appeared at the said Lincoln land office and offered to prove up and pay for the said land, and the register of said land office ordered that a written notice be served upon the said Charles E. Van Pelt, requiring him to appear on the 13th day of June, 1871, at 2 o'clock p. m., and show cause why the said plaintiff should not be allowed to perfect his entry of said land. That the said Charles E. Van Pelt appeared, as did also said plaintiff, and the attorneys for the said Van Pelt moved to dismiss said

cause of plaintiff v. Van Pelt, on the ground that said plaintiff's filing having been granted after the said Van Pelt's homestead was issued, and the same not having been cancelled, but still subsisting, the issuing of said pre-emption filing was illegal and void; and the plaintiff avers that the register of said land office sustained said Van Pelt's motion and dismissed the cause; but said receiver of said land office was of the opinion that said cause should not be dismissed; that the said plaintiff was entitled
17 to the aforesaid filing on the land aforesaid, and should be allowed to make his final proof on the notice given.

And the plaintiff further avers that he did, in pursuance of the decision of the aforesaid receiver of said Lincoln land office, offer to prove up the aforesaid land by taking the oath prescribed by law in that behalf, and proved to the satisfaction of said register & receiver of said land office his settlement, continued residence, improvements, and cultivation of said land in the manner and form as required by law, as well as his qualifications as a pre-emptor, and offered to pay for said land the price prescribed by law, which said dismissal, final proof, &c., aforesaid was by said register & receiver sent to the Commissioner of the General Land Office for his decision; and the plaintiff further avers that the said Charles E. Van Pelt did settle upon said land above described on the 23d day of August, 1870, and on the 10th day of October, 1870, he built a house thereon, and broke some 15 acres of said land in the spring of 1871, and dug a well thereon and resided thereon for some time, the length thereof this plaintiff cannot exactly say. And the plaintiff further avers that on the 15th day of February, 1872, the said Charles E. Van Pelt commited his said entry by taking the oath prescribed by law in that behalf
18 and by proof of settlement, residence, and cultivation, and improvements, under the act of Congress approved May 20th, 1862, and received from said register the patent certificate for the above described brand; and the plaintiff further avers that from the 17th day of June, 1870, and ever prior thereto, until the filing of this his petition, he has been during all of said time a bona fide resident of said tract of land, and has cultivated and improved the same and made it his home; and the plaintiff further avers that the Commissioner of the General Land Office, by his letter dated May 28th, 1872, after considering the case, ordered an investigation, after due notice to all parties in interest.

That said register and receiver were especially to ascertain the date of settlement on which either party based his present claim, with the date when any application may have been made and refer'ed to file or enter the tract in dispute, and, after taking said testimony, to send the same, together with their joint opinion to said Commissioner of the General Land Office. And the plaintiff avers that on the 10th day of July, 1872, an investigation of the questions arising between this plaintiff and the said Charles E. Van Pelt, as to their respective rights to the above de-
19 scribed land, was had before the register and receiver of said Lincoln land office, and, after numerous delays, was by said register & receiver decided in favor of this plaintiff; that the only question in the case was, whether the said plaintiff was a qualified pre-emptor, which was submitted to the Commissioner of the General Land Office for his decision. And the plaintiff further avers that the said Commissioner, by his letter dated July 31st, 187 , while admitting that said plaintiff had made the first settle-

ment on said land, and made the necessary improvements, cultivation, and residence, said the only question in the case was, is this plaintiff a qualified pre-emptor, and, if he was, said plaintiff was entitled to said land.

And the plaintiff avers that the said Commissioner of the General Land Office decided, that because it was shown that some one by the name of this plaintiff, and who signs by mark, or that some one in the name of this plaintiff, had made filings on offered lands in the West Point land office, in the State of Nebraska, concluded that this plaintiff had made said filings, which said declaratory statements were for the following lands, to wit:

No. 141. Dated March 10th, 1860.

For the northeast quarter of section 9, township 19, range 8, and No. 239. August 28th, 1860. For the south half of the northeast
20 quarter and the south half of the northwest quarter of section 10, township 19, range 8, in Dodge County, Nebraska, and decided that said Charles E. Van Pelt was for that reason entitled to said land, and the plaintiff avers that he never made either of said filings, nor authorized any one to make either of said filings; that he has never had the right of pre-empting any of the public lands under any of the laws of Congress, and the plaintiff further avers that he only appealed from the said decision of the Commissioner of the General Land Office to the honorable Secretary of the Interior, who, by his letter dated June 5th, 1874, to the Commissioner of the General Land Office, affirmed the decision of said Commissioner of the General Land Office, and that officer, by his letter dated June 9th, 1874, addressed to the register and receiver of the Lincoln land office of Nebraska, announcing the decision of the aforesaid honorable Secretary of the Interior, and stating that in consequence of the aforesaid decision, he the said Commissioner had cancelled the declaratory statement of this plaintiff on the records of the General Land Office that day, as well as affirmed the aforesaid entry of the said Charles E. Van Pelt, and passed the same for patenting. And the plaintiff avers that he believes that the de-
21 cision so made as aforesaid, reverses a well-settled construction of the law in that behalf, and does great injury and injustice to him; and that the aforesaid decision as well as the issuing of the patent for the above-described land to the said Charles E. Van Pelt, was obtained from said office by corrupt influence, the exact nature of which is unknown to this plaintiff. And the plaintiff further avers, that on the 15th day of June, 1874, the patent was issued to the said Charles E. Van Pelt for the above-described lands, and that the same was filed for record June 20th, 1874, at 3.30 o'clock p. m., and recorded in record O, p. 350.

That on the 23d day of June, 1873, the said Charles E. Van Pelt and Ada Van Pelt, his wife, conveyed the above-described lands to the defendant Edgar A. Baldwin, by deed, with full covenants of warranty, which said deed was filed for record May 7th, 1874, at 9 o'clock a. m., & recorded in deed record O, page 199.

And that the plaintiff further avers that on the day , 1874, the said defendant Edgar A. Baldwin commenced his suit in the district court of the 2d judicial district, in and for Lancaster County, Nebraska, to eject this plaintiff and one Sidney Reese, who holds under this plaintiff from the aforesaid lands on which he, the said plaintiff, has been
22 residing, a short interval alone excepted, for more than seven years last passed, and on which he has made the improvements as here-

tofore stated in this his petition, and that if he, the said plaintiff, is ejected from the aforesaid land he will be without a home, and without means to furnish one, and will thereby suffer irreparable injury.

Wherefore the plaintiff prays that the legal title to the aforesaid land, which is now in said defendant, may be vested in this plaintiff; and in that event this plaintiff is ready and willing, upon the order of this court, to pay to the said defendant the money so expended by his said vendor in proving up the aforesaid land, together with legal interest thereon.

And in the meantime, that the said defendant may be enjoined by the order of the court from further proceedings with his said action in ejectment, and this cause can be fully heard and determined, and for such other and further relief as may be just & equitable in the premises.

FRANCIS G. STARK,
By J. M. ROBINSON.
W. F. CHAPIN &
GEO. W. LOWLY,
*For Petitioner.*

STATE OF NEBRASKA,
*Lancaster, ss:*

And the said Francis G. Starks, plaintiff in the aforesaid action,
23 being first duly sworn, says that the several matters and things set forth in the above petition are true in substance and in fact, as he verily believes.

his
F. G. + STARKS.
mark.

Attest:
W. F. CHAPIN.

Subscribed in my presence and sworn to before me this day of November, 1874.

R. O. PHILLIPS,
*Clk D. C.*

*Precipe.*

STATE OF NEBRASKA,
*Lancaster County, ss:*

FRANCIS G. STARK, PLAINTIFF,
*vs.*
EDGAR A. BALDWIN, DEFENDANT.

In the district court of the 2d judicial district in & for Lancaster County, Nebraska.

The clerk of said court will issue summons in this cause for the said Edgar A. Baldwin, defendant, returnable according to law.

JAMES M. ROBINSON,
W. F. CHAPIN &
GEO. W. LOWLY,
*For Petitioner.*

The foregoing petition and precipe are endorsed as follows: Francis G. Stark v. Edgar A. Baldwin. Petition & precipe. Filed Nov. 3d, 1874.

R. O. Phillips, cl'k d. c. James M. Robinson, W. F. Chapin & Geo. W. Lowly, for petitioner.

24 *Summons.*

THE STATE OF NEBRASKA,
*Lancaster County, ss:*

The people of the State of Nebraska to the sheriff of said county, greeting:

You are hereby commanded to notify Edgar A. Baldwin, defendant, that he has been sued by Francis G. Starks, plaintiff, in the district court of the second judicial district in and for said county of Lancaster, and that unless he answer by the 7th day of December, A. D. 1874, the petition of said Francis G. Starks, filed against him in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on or before the 16th day of Nov'r, A. D. 1874.

Witness my hand and seal of said court at Lincoln, this 3d day of November, A. D. 1874.

[SEAL.] R. O. PHILLIPS, *Clerk.*

The above summons bears the following endorsements:

Doc. E. No. 1200. Page 3. District court. Francis G. Stark, plaintiff, against Edgar Baldwin, defendant. Returnable Nov. 16th, 1874. Robinson, Chapin & Lowly, plaintiff's attorney. Return, & filed Nov. 16th, 1874. R. O. Phillips, clerk, by J. P. Hebard, deputy.

25 Received Nov. 4, 1874, at 10 o'clock a. m. Sam. McClay, sheriff.

*Sheriff's return of summons.*

STATE OF NEBRASKA,
*Lancaster County, ss:*

I hereby certify that on the 14th day of November, A. D. 1874, I served the within writ on the within-named Edgar A. Baldwin, by delivering to him a true and certified copy of the same with all the endorsements thereon.

Fees $1.00. Paid by p'l'ff.

SAM. McCLAY, *Sh'ff,*
By J. HOAGLAND, *Deputy.*

*Answer.*

In the district court of the 2d judicial district of the State of Nebraska, in and for the county of Lancaster.

FRANCIS G. STARKS, PLAINTIFF,
*against*
EDGAR A. BALDWIN, DEFENDANT. } Answer.

The said defendant answers the petition of the said plaintiff in this action, and says, that whether the said plaintiff is the head of a family or a

26 citizen of the United States he does not know, nor has he sufficient in-

formation thereof on which to found a belief. He therefore denies the same, and leaves the said plaintiff to his proof thereof as he may be advised. But this defendant denies that the said plaintiff never had enjoyed the right of pre-empting any of the public lands of the United States under any of the laws thereof. That whether the said plaintiff was not the proprietor of three hundred and twenty acres of land in any State or Territory of the United States, and whether he did not quit or abandon his own land to reside on the public lands; whether he, the said plaintiff, did prior to the 12th day of July, 1866, make in person or otherwise, a settlement upon the lands and premises described in the said petition, this defendant does not know nor has he sufficient information thereof on which to found a belief.

He therefore denies the same, and leaves the said plaintiff to his proofs thereof as he may be advised; but this defendant denies that he, the said plaintiff, has, in connection with his family or otherwise, inhabited and improved the same to this day, and erected a dwelling house thereon. This defendant further answering says, that whether the said plaintiff did,

27 on or about the first day of March, 1867, erect on said premises a dug-out about the size of 12 ft. by 14 ft., with door and windows, in which said dug-out the said plaintiff with his said wife resided

until the completion of the house aforesaid mentioned in the said petition of the said plaintiff; whether the said plaintiff, on or about the month of June, 1870, erected a good and substancial frame dwelling-house 12 feet by 14 feet, one story high, and attached thereto a kitchen 10 ft. by 12 ft., built of lumber one story high, said house and kitchen having three doors and three windows, and of the cost of one hundred and fifty dollars, this defendant answering says he does not know, nor has he sufficient information thereof on which to found a belief. He, therefore, denies the same, and leaves the said plaintiff to his proof thereof, as he may be advised.

This defendant, further answering, says that whether upon the completion of the said dwelling-house the plaintiff moved from said dug-out into the same, and has resided therein to this day, and whether on or about the 1st day of June, 1872, he sunk a substancial well on said premises, at a cost of forty dollars, this defendant avers that he does not know, nor has he sufficient information thereof to found a belief thereon. He, therefore, denies the same, and he explicitly denies that the said plaintiff

28 ploughed, cultivated, and had in a good state of cultivation about 28 acres of said land upon which he had raised corn, wheat, and oats, or either of them, prior to the 10th day of May, 1871, and upon which numerous trees and shrubs were then growing which had been planted and cultivated by his own hands, or that he has until the present time cultivated and improved the said premises to the extent of his health and pecuniary ability.

This defendant, further answering, says that whether on the 17th day of June, 1870, the said plaintiff tendered his declaratory statement to the register of the land office for the Lincoln district in this State, a written statement, describing the aforesaid land and premises, and declaring therein the plaintiff's intention to claim said lands under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved September

4, 1841, claiming his settlement thereon to be on and from the month of June, 1864; whether on the aforesaid 17th day of June, 1870, and after tendering the aforesaid declaratory statement to the said register the said plaintiff offered to prove up said land, and did take the oath pre-
29 scribed by law in that behalf, and proved to the satisfaction of the register & receiver of the aforesaid land office his settlement, continued residence, improvements, and cultivation of said premises in the manner and form required by law, or the qualification of the plaintiff as a pre-emptor, and thereupon offered to pay the price prescribed by law for the said lands; whether the said land officers at said land office refused to grant him a pre-emption filing on the said lands, but sent the declaratory statement, together with the aforesaid proof of settlement, continual residence, improvements, and cultivation as well as the plaintiff's qualifications as a pre-emptor to the Commissioner of the General Land Office for his decision and asking that said plaintiff be allowed to enter the same under said act of Congress, this defendant, answering, says he does not know, nor has he sufficient information thereof on which to found a belief. He therefore denies the same.

This defendant, further answering, says that he admits that the Commissioner of the General Land Office, by his letter of July 8, 1870, decided that the plaintiff was not entitled to pre-empt the said land, but whether for the reason given by said plaintiff in his said petition this defendant says that he does not know.

30 This defendant also admits that on or about the 23d day of August, 1870, Charles E. Van Pelt tendered his declaratory statement to the register & receiver of the United States land office at Lincoln, Nebraska, alleging his settlement on that day, and asking to pre-empt the aforesaid land, which was refused by the said register and receiver; that, thereupon, the said Charles E. Van Pelt appealed from the said decision of the said register & receiver to the Commissioner of the General Land Office.

Defendant also admits that on or about the 10th day of May, 1871, the said Charles E. Van Pelt obtained a soldier's homestead upon the said land, but whether the said plaintiff, twelve days thereafter, tendered to the register his declaratory statement for the same, alleging his settlement from June 20th, 1870, which was received by the said register, and pre-emption filings given to the said plaintiff; whether on the 10th day of June, 1871, the said plaintiff appeared at the said Lincoln land office and offered to prove up and pay for the said land; whether the said register thereupon ordered that a written notice be given to the said Charles E. Van Pelt, requiring him to appear on the 13th day of June, 1871, at 2 o'clock p. m., and show cause why
31 the said plaintiff should not be allowed to perfect his entry of said land; whether the said Charles E. Van Pelt and the said plaintiff did appear; whether the attorney for the said Van Pelt moved to dismiss the cause of plaintiff vs. Van Pelt, on what ground, and whether the said motion was sustained, and said proceedings dismissed, as is set forth in the plaintiff's petition, this defendant does not know, nor has he sufficient information thereof on which to found a belief. He therefore denies the same. And this defendant further says that he has no knowledge as to the views or opinions of the receiver of the said land office in reference to the rights of the said plaintiff as to whether the said case ought to have

been dismissed; or as to whether the plaintiff did, in pursuance of the decision of the said receiver of the said Lincoln land office, offer to prove up the aforesaid lands by taking the oath prescribed by law in that behalf, and proved to the satisfaction of said register & receiver of said land office his settlement, continued residence, improvements, and cultivation of said land in the manner & form required by law, as well as his qualifications as a pre-emptor, and offered to pay for said lands the price prescribed by law, nor has he sufficient information thereof on which to found
32 a belief. He therefore denies the same as alleged and set forth in the said plaintiff's petition.

The defendant, further answering, says, that he admits that the said Charles E. Van Pelt did settle upon the lands above described on or about the 23d day of August, 1870, the exact time of such settlement being unknown to this defendant.

That he built a house thereon and broke about fifteen acres of said land in the spring of 1871, and dug a well thereon, and resided thereon for a considerable length of time, and on the 15th day of February, 1872, commuted his said entry by taking the oath prescribed by in that behalf, and by proof of settlement, residence, cultivation, and improvements under the act of Congress, approved May 20th, 1862, and received a duplicate receipt for the same.

And defendant says whether from the 17th day of June, 1870, and even prior thereto, until the filing of his said petition, the said plaintiff has during all of said time been a bona fide resident of said tract of land and has cultivated and improved the same and made it his home, this defendant does not know, nor has he sufficient information thereof to form a belief. He therefore denies the same.

33 This defendant, further answering, admits that the Commissioner of the General Land Office, by his letter dated May 28th, 1872, after considering the case, ordered an investigation after due notice to all parties in interest. He also admits that in said letter the said register & receiver were directed to especially ascertain the date of settlement of each party, on which he based his present claim, respectively, with the date when any application may have been made, and refused to file on or enter the tract in dispute, and after taking said testimony to send the same, together with their joint opinion, to said Commissioner of the General Land Office.

He also admits that on or about the 10th day of July, 1872, an investigation of the questions arising between the said plaintiff and the said Charles E. Van Pelt, as to the question of their several and respective rights to the said tract of land was had before the said land officers, and that after numerous delays the same was, by the said register and receiver, decided, not in favor of the plaintiff, but on the contrary, in favor of the said Charles E. Van Pelt. This defendant denies that the only question submitted was as to whether the plaintiff was a qualified pre-
34 emptor, but he admits that that question was submitted to the Commissioner of the General Land Office and decided adversely to the said plaintiff. But he avers that the whole question at issue between the said plaintiff and the said Charles E. Van Pelt was, by the said Commissioner of the General Land Office, decided in favor of the said Charles E. Van Pelt.

This defendant admits that the said plaintiff took an appeal from the said decision of the said Commissioner of the General Land Office to the Secretary of the Interior, and that the said Secretary affirmed the said decision of the said Commissioner of the General Land Office. He also admits that the said Commissioner of the General Land Office, by his letter dated June 9th, 1874, addressed to the register & receiver of the Lincoln land office, announcing the aforesaid decision of the Secretary of the Interior, stated that in consequence of the said decision, he, the said Commissioner, had cancelled the declaratory statement of the said plaintiff on the records of the General Land Office on that day, as well as affirmed the aforesaid entry of the said Charles E. Van Pelt, and passed the same for patenting.

This defendant, further answering, denies that either the afore-
35 said decision, or the issuing of the patent for the aforesaid lands to the said Charles E. Van Pelt, were obtained from said office by corrupt influences.

This defendants admits that on the 15th day of June, 1874, a patent was issued to the said Charles E. Van Pelt, for the above described lands, and that the same was filed for record, and recorded in the office of the county clerk, in and for said county of Lancaster, in manner and form and at a time as stated in plaintiff's petition in this action.

He also admits that the said Charles E. Van Pelt, and Ada Van Pelt, his wife, on the 23d day of June, 1873, conveyed the said lands to this defendant by deed, which was duly recorded in the manner and form, and on the day set forth and stated in this plaintiff's petition.

He also admits the commencement of the suit by this defendant against the said plaintiff, and the said Sidney Reese, for the recovery of the said premises in manner and form as stated by the said plaintiff in his said petition.

This defendant, further answering, says that the said Charles E. Van
Pelt was, on the said 10th day of May, 1871, the head of a family,
36 a citizen of the United States, and had never borne arms against the Government of the United States, or given aid and comfort to its enemies, and had never had benefit of the act entitled "An act to secure homesteads to actual settler' on the public domain," approved May 20, 1862, and had served in the military service of United States for a period not less than ninety days during the war of the rebellion, had been honorably discharged from said military service, and had remained loyal to the Government of the United States.

This defendant, further answering, denies that the plaintiff was a qualified pre-emptor, either on the 17th day of June, 1870, or on the 10th day of June, 1871, because he says that prior to those dates, to wit, on the 10th day of March, 1860, at the Omaha land office, in the State of Nebraska, (now the West Point land office), the said plaintiff had made a pre-emption filing on and for the northeast quarter of section 9 in township 19 north, of range 8 east of the 6th principal meridian, in said State of Nebraska; and also, on the 28th day of August, 1860, the said plaintiff had, at the last aforesaid land office, made a pre-emption filing on and
for south half of the northeast quarter and the south half of the
37 northwest quarter of section 10, in township 19 north, of range 8 east of the 6th principal meridian, in the State of Nebraska—both of said tracts of land filed upon as aforesaid having been previously offered for sale, by and under a proclamation of the President of the United

States; and this defendant expressly denies the allegations contained in the said petition, that the said plaintiff did not make the aforesaid pre-emption filings.

This defendant, further answering says, that the lands in dispute herein had been, in the year 1860, offered for sale by and under a proclamation of the President of the United States, and that the said plaintiff could not lawfully make a pre-emption filing thereon in 1870, alleging "and by virtue of a settlement thereon begun as early as 1866."

And this defendant, further answering, says that the several and respective claims, as well of the said plaintiff, of the said Charles E. Van Pelt to the said tracts of land, as well in respect to priority of settlement, regularity of proceedings, qualifications of the parties as pre-emptors and homesteaders, and all other matters affecting the conflicting rights of the parties in fact as well as in law, were fully and fairly presented to
38 and litigated before the Land Department of the United States; and this defendant submits to the court that the said plaintiff is bound by the final decision of said department in the premises.

This defendant therefore prays that he may be declared to be equitable as well as legal owner of the said tracts of land and be awarded the possession thereof, or that this action be dismissed, and this defendant be allowed to proceed with his action at law for the recovery thereof.

COBB, MARQUETT & MOORE,
*Attorneys for the Defendants.*

STATE OF NEBRASKA,
*County of Lancaster, ss:*

A. L. Baldwin, being duly sworn, says that he is the agent, duly authorized, of the defendant in this action. That the said defendant is a non-resident of the county of Lancaster, and is now absent therefrom.

Affiant further says that he has read the foregoing answer, and believes the facts stated in the said pleadings to be true.

A. L. BALDWIN.

Subscribed in my presence and sworn to before me this 20th day of March, A. D. 1875.

[SEAL.] BENJA. F. FISHER,
*Notary Public.*

39 The above answer bears the following endorsements: District court, Lancaster County. Francis G. Stark vs. Edgar H. Baldwin. Answer. Filed March 30, 1875. Wm. A. Sharrar, cl'k d. c., by P. Hebard, deputy. Cobb, Marquett & Moore, attorneys for def't.

*Stipulation.*

In the district court of the 2nd judicial district within and for Lancaster County, Neb.

FRANCIS G. STARK, PL'FF,
*vs.*
EDGAR A. BALDWIN, DEF'T. } Stipulation.

It is hereby stipulated and agreed by and between the parties to this ac-

tion that this cause shall be submitted to the court for decision on the pleadings and on a certified copy of the record of a cause in which
40 Francis G. Stark was claimant and Charles E. Van Pelt was contestant, decided by the Commissioner of the General Land Office, Washington, D. C., on the 31st day of July, 1873, and affirmed by the Hon. Secretary of the Interior June the 5th, 1874, which said record contains the testimony of the witnesses and the decisions of the various officers thereon.

It is further stipulated that each party shall have the right to introduce all proclamations of the President or Presidents of the United States, or orders of the Secretary of the Interior, and Commissioner of the General Land Office, and other records effecting the status of this land in controversy, and also the lands alleged to have been embraced in the prior filings, or declaratory statements alleged to have been filed by one F. G. Stark, the plaintiff.

And it is further stipulated and agreed by and between the parties aforesaid that the plaintiff shall have the right to introduce the deeds or deed of conveyance from Charles E. Van Pelt and wife to the defendant, Edgar A. Baldwin, and the mortgage or mortgages of Chas. E. Van Pelt to Edgar A. Baldwin, and the above shall be all the evidence
41 given in the above-entitled cause by either party.

And it is further stipulated and agreed by and between the parties that the above cause is to be decided upon the merits, that neither party is to be prejudiced by any defect in the pleadings, each party to have the privilege of submitting written or oral arguments when said cause is submitted on the 1st day of November, A. D. 1875, being the 1st day of the Nov. term of court.

In witness whereof the parties aforesaid have hereunto set their hands this 14th day of July, 1875.

J. M. ROBINSON,
G. W. LOWLEY &
W. F. CHAPIN,
*Attorneys for Pl'f'f.*
COBB, MARQUETT & MOORE,
*Att'ys for Def't.*

We assent to the above stipulations and become parties to the same.
OCT. 6, 1876.

LAMB, BILLINGSLEY & LAMBERTSON,
*Att'ys for Van Pelt.*

The above stipulation is endorsed as follows: F. G. Stark vs.
42 E. A. Baldwin. Stipulation. Filed July 14th, 1875. Wm. A.. Sharrar, cl'k d. c. Certified copy ordered this day.

*Motion of Chas. Van Pelt to be made party.*

In district court of the 2nd judicial district, in & for Lancaster County, Nebraska.

FRANCIS G. STARK
*vs.*
EDGAR A. BALDWIN.

Now comes Chas. Van Pelt, by his attorneys, Lamb, Billingsley &

Lambertson, and moves the court for an order in said action, making said Chas. Van Pelt a party in said action, on the ground that said Van Pelt has an interest in the matter in controversy in said action, as more fully appears by affidavit herewith filed.

LAMB, BILLINGSLEY & LAMBERTSON,
*Att'ys for Chas. Van Pelt.*

The above motion bears the following endorsement: 1200. E. 3. Francis G. Stark vs. Edgar A. Baldwin. Motion of Chas. Van Pelt
43 to be made party. Filed Feb. 7th, 1876. Wm. A. Sharrar, cl'k d. c. Lamb, Billingsley & Lambertson, att'ys for Van Pelt.

*Affidavit of Chas. Van Pelt to be made a party def't.*

In district court in and for Lancaster County, Nebraska.

FRANCIS G. STARKS
*vs.*
EDGAR A. BALDWIN.

LANCASTER COUNTY,
*State of Nebraska, ss:*

Chas. Van Pelt, being first duly sworn, on oath says that he desires to be made a party defendant herein, for the reason that said action is a suit in equity, enjoining said defendant in a suit in ejectment in said court against said plaintiff by defendant concerning premises in said county.

That this affiant is interested in said action as a covenantor by deed, by this affiant to said Edgar A. Baldwin, for the same premises in controversy in said suits.

CHAS. E. VAN PELT.

Subscribed in my presence and sworn to before me this 7th day
44 of February, 1876.

JOHN McLEAN,
*Justice of Peace.*

The above affidavit bears the following endorsements: 1200. E. 3. Francis G. Starks vs. Edgar A. Baldwin. Affidavit of Chas. Van Pelt to be made a party def't. Filed Feb'y 7th, 1876. Wm. Sharrar, cl'k d. c.

*Court journal entry, book C, page* 271. *Feb. 14th,* 1876.

FRANCIS G. STARK
*vs.* 1200.
EDGAR A. BALDWIN.

This cause comes on for hearing upon the motion of Chas. Van Pelt for order to be made party herein. After argument by counsel, it is submitted to the court, and on consideration whereof it is ordered and decreed by the court that the said motion be, and the same hereby is, sustained, and Chas. Van Pelt has leave to file answer by Wednesday morning.

45 *Answer of Chas. E. Van Pelt.*

THE STATE OF NEBRASKA,
*Lancaster County:*

In district court.

FRANCIS G. STARK, PL'FF,
*against*
EDGAR A. BALDWIN, DEF'T. } Answer by Van Pelt.

And now comes Charles E. Van Pelt, on leave of the court first had, on being made party defendant herein, and answers the petition of the plaintiff filed herein, and says:

FIRST DEFENSE.—This defendant expressly denies each and every allegation of fraud, deceit, or fraudulent practices at any time or in any manner alleged against him, and, on the contrary thereof, alleges that each and every of his said acts and doings in and about the obtaining the said premises, and the legal title to the same, from the Government of the United States, was done in good faith, honestly, and without any fraud or deceit on the part of this defendant.

SECOND DEFENSE.—This defendant, further answering, says that
46 the said plaintiff ought not to be permitted to allege that he never, prior to the 12th day of July, 1866, enjoyed the right of pre-empting any of the public lands of the United States, or to allege, as the said plaintiff hath in his said petition, that at the times alleged in said petition that he was qualified under the laws of the United States to file a pre-emption claim on the said lands in said petition described, and so acquire title to the same under the pre-emption laws of the United States. Because this defendant shows that heretofore, to wit, on or about the 9th day of July, 1872, the said plaintiff and this defendant then were both living on the said lands in said petition described and claimed by the plaintiff; that both the said plaintiff and this defendant claimed the said lands under the pre-emption and homestead laws of the United States.

That no patent had then issued for said lands. That pursuant to the laws of the United States relating to the public lands, and the rules, regulations, and provisions established by the Com'is'r of the General Land Office, and the Secretary of the Interior of the United States de-
47 clared, ordained, and appointed under and in pursuance of the laws of the United States, the said plaintiff, on or about the 9th day of July, 1872, appeared at the land office of the land district in which said lands lie and offered before the register & receiver of said land district proof of said several foregoing facts, in order to consum'ate said plaintiff's pre-emption entry or claim; and thereupon, afterward, notice was by said Commissioner, Secretary of the Interior, and register & receiver, ordered and required to be given to this defendant, pursuant to the aforesaid rules and regulations so as aforesaid established, &c., which said notice was given to this defendant, who was by said notice and order, and by subsequent further orders in that behalf by them made, to the end that there should be a full and complete hearing, trial, and determinations of the respective right of the said plaintiff and this defendant to

the said lands before the said register and receiver, and before the said Commissioner of the General Land Office and before the Secretary of the Interior of the United States, under the said laws of the United
48 States relating to the public lands, and thereupon, pursuant to the said several foregoing proceedings, this defendant duly appeared before the said register & receiver, and the Commissioner of the General Land Office and Secretary of the Interior aforesaid, duly having full, complete, and finan jurisdiction, both of the subject-matter and of the said plaintiff, and this defendant both consenting thereto, and both invoking the decision and determination of the said tribunal; and the said plaintiff then and there, on the said trial, duly alleged, claimed, and set forth that he never, prior to the 12th day of July, 1866, had enjoyed the right of pre-emption any of the public lands of the United States, and he was qualified under the laws of the United States to file a pre-emption claim on the lands described in the petition, and so acquire the same under the pre-emption laws; and this defendant then and there duly traversed and denied each of said last above allegations, and then and there duly claimed and alleged that the said plaintiff had, prior to said 12th day of
49 July, 1866, exercised, used, and exhausted his pre-emption right, and was not then a qualified pre-emptor. And this defendant alleged that theretofore, to wit, on the 10th day of March, 1860, at the Omaha land office, in the State of Nebraska, the said plaintiff had made a pre-emption filing, on and for the northeast quarter of section nine, township 19 north, of range 8 east of the 6th principal meridian, in said last-named State, and had also, on the 28th day of August, 1860, at the place and office aforesaid, made a pre-emption filing on and for the south half of the northeast quarter and the south half of the northwest quarter of section ten, in township 19 north, of range 8 east of 6 p. m. in said State, both of which said tracts were public lands of the United States at that time, and theretofore had been duly offered at public sale, by proclamation of the President of the United States. And this defendant shows that thereupon, on the said issues (among others) so joined as aforesaid, the said plaintiff from time to time furnished full proof, all of which was duly considered, and thereupon, afterwards, on the 31st day of July, 1873,
50 on appeal from the aforesaid register & receiver of said cause and matter, and the whole thereof, the said Commissioner of the General Land Office duly found, determined, and decided all the said issues aforesaid against the said plaintiff and in favor of this defendant, and duly decided that the said plaintiff, at the time he sought to pre-empt the said lands described in the petition as therein alleged, was not a qualified pre-emptor under the laws of the United States, by reason and from the fact then found and determined against said plaintiff, that he had before that time exercised and exhausted his pre-emption right.

Wherefore this defendant insists that the said plaintiff ought to be estopped to again allege against the said decision, determination, and judgment, which still remains unreversed and in full force, &c.

THIRD DEFENSE.—This defendant, for his third defense, denies that the said plaintiff had not, prior to June 17, 1870, exercised the
51 right of pre-emption, as the plaintiff hath alleged; but, on the contrary, had exercised and exhausted his pre-emption right prior

to that date, in said State of Nebraska, on offered lands lying in said State. Wherefore defendant asks said suit be dismissed with costs.

LAMB, BILLINGSLEY & LAMBERTSON,
*Att'ys for Def't Van Pelt.*

THE STATE OF NEBRASKA,
*Lancaster County, ss:*

Chas. E. Van Pelt, being first duly sworn, on oath says he is the defendant named in the foregoing answers, and that he believes the facts stated in the said answer are true.

CHAS. E. VAN PELT.

Subscribed in my presence and sworn to before me this 26th day of February, 1876.

WM. A. SHARRAR, *Cl'k D. C.*

The foregoing answer bears the following endorsements: 1200. E. 3. Francis G. Starks vs. Edgar A. Baldwin et al. Answer of C. E.
52 Van Pelt. Consent given to file this Feb'y 26, 1876. W. F. Chapin, pl'ff's att'y. Filed, Feb'y 26, 1876. Wm. A. Sharrar, cl'k d. c. Lamb, Billingsley, & Lambertson, att'ys for Van Pelt.

*Demurrer to answer of Van Pelt.*

FRANCIS G. STARK
*vs.*
EDGAR A. BALDWIN AND CHAS. E. VAN PELT. } Demurrer.

And now comes the said Francis G. Starks, plaintiff, and says that the several matters set up in the answer of the said Chas. E. Van Pelt, defendant, are not sufficient in law to bar the action of the said plaintiff.

Wherefore, he prays judgment.

JAS. M. ROBINSON,
W. F. CHAPIN,
G. W. LOWLEY,
*Att'ys for Plaintiff.*

The foregoing demurrer is endorsed as follows, to wit: 1200. E. 3. Francis G. Starks vs. Edgar A. Baldwin and Charles E. Van
53 Pelt. Demurrer to answer of Van Pelt. Filed Febr'y 26th, 1876. Wm. A. Sharrar, cl'k d. c.

*Court journal entry book C, page* 362, *Feb.* 28*th*, 1876.

FRANCIS G. STARK
*vs.*
EDGAR A. BALDWIN. } 1200. E. 3.

This cause comes on for hearing upon demurrer to answer, and by leave of the court the same is hereby withdrawn, and the third defense of Charles E. Van Pelt's answer also withdrawn, and plaintiff has leave to file reply to defendant's answer by Wednesday morning.

*Reply to separate answer of Baldwin & Van Pelt.*

In the district court.

FRANCIS G. STARKS
*vs.*
BALDWIN & VAN PELT. } Reply.

The plaintiff for reply to the separate answers of defendants, Bald-
54 win and Van Pelt, denies each allegation inconsistent with the facts set forth in plaintiff's petition.

JAMES M. ROBINSON.
W. F. CHAPIN &
GEO. W. LOWLEY.

The foregoing reply is endorsed as follows: 1200. E. 3. Francis G. Starks vs. Edgar A. Baldwin et al. Reply to separate answers of Baldwin & Van Pelt. Leave given to file this reply and verification waived. Lamb, for Van Pelt; Cobb, Marquett & Moore, att'ys for Baldwin. Filed March 1st, 1876. Wm. A. Sharrar, cl'k d. c. Robinson, Chapin & Lowley, for pl't'ff.

*Court journal entry, book D, page* 181, *Nov.* 6, 1876

FRANCIS G. STARKS
*vs.*
EDGAR A. BALDWIN AND CHARLES VAN PELT. } 1200. E. 3.

55 And now, on this 6th day of November, A. D. 1876, this cause coming on to be heard before the court, and the court, after hearing all the evidence in the case and the argument of counsel, and being fully advised in the premises, the court do find that the said plaintiff has no cause of action against said defendants, or either of them, and that the injunction heretofore allowed in said action should be, and is hereby, dissolved.

It is therefore ordered, adjudged, and decreed by the court that the said action is hereby dismissed at the costs of the plaintiff, taxed at $ , and that the said injunction be, and is hereby, dissolved.

*Precipe.*

In the district court of the 2nd judicial district of Nebraska, held in and for Lancaster county.

FRANCIS G. STARK
*vs.*
EDGAR A. BALDWIN ET AL. } Precipe.

SIR: You will please prepare a transcript in above entitled action
56 for use in appeal from above-named court to the Supreme Court, containing the pleadings, judgment, or decree, and all the depositions, testimony, and proofs offered in said cause.

Yours, &c.,

W. F. CHAPIN AND C. C. BURR,
*Att'ys for Pl't'ff.*

To WM. A. SHARRAR,
*Clerk D. C., Lincoln, Neb.*

Endorsed as follows: Francis G. Stark vs. Edgar A. Baldwin et al. Precipe. Filed M'ch 13th, 1877. Wm. A. Sharrar, cl'k d. c. By A. D. Burr, dep. W. F. Chapin & C. C. Burr, att'ys for plaintiff.

*Stipulation.*

In the district court of the 2nd judicial district of Nebraska, held in and for Lancaster county.

FRANCIS G. STARKS
*vs.*
EDGAR A. BALDWIN ET AL. } Stipulation.

It is hereby stipulated and agreed by and between the respec-
57 tive parties to the above-entitled action that the testimony used on the hearing of said cause in the district court may and shall be made a part of the record of said cause in the Supreme Court, and that the making of a transcript of the same by the clerk of said court is hereby waived.

W. F. CHAPIN AND C. C. BURR,
*Att'ys for Pl'ff.*
COBB, MARQUETT & MOORE,
*Att'ys for def't.*

The foregoing stipulation bears the following endorsements: Francis G. Stark vs. Edgar A. Baldwin et al. Stipulation. Filed M'ch 13, 1877. Wm. A. Sharrar, cl'k d. c., by A. D. Burr, dep.

58 STATE OF NEBRASKA,
*Lancaster County, ss.*

I, Wm. A. Sharrar, clerk of the district court, held within and for said county and State, do hereby certify that the above and foregoing is a true and correct copy of the petition & precipe, summons, answer, stipulation, motion of Van Pelt, affidavit of Van Pelt, court journal entry book C, page 271, answer of Van Pelt, demurrer to ans. of Van Pelt, court journal entry book C, page 362, reply to separate answers of Baldwin & Van Pelt, court journal entry book D, page 181, precipe for transcript & stipulation, as the said papers were filed in my office, & the said proceeding had & done in said court.

Witness my hand & official seal this 16th day of March, A. D. 1877.

[SEAL.] WM. A. SHARRAR, *Cl'k D. C.*
By A. D. BURR, *Dep.*

59 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *May 2nd*, 1876.

I, U. J. Baxter, acting commissioner of the General Land Office, do hereby certify that the annexed proclamation, No. 637, is a true and literal exemplification from the records of this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[SEAL.] U. J. BAXTER,
*Acting Commissioner of the General Land Office.*

60 No. 637.

By the President of the United States.

In pursuance of law, I, James Buchannan, President of the United States of America, do hereby declare and make known that public sales will be held at the undermentioned land offices in the Territory of Nebraska, at the periods hereinafter designated, to wit:

At the land office at Brownsville, commencing on Monday, the eighth day of August next, for the disposal of the public lands within the following named townships, viz:

North of the base line and east of the sixth principal meridian.

The part of township one outside of the Sac and Fox and half-breed Nemaha reservation, of range 17.

The parts of townships 1, 2, 3, and 4 outside of the Sac and Fox and half-breed Nemaha reservation, and fractional townships 5 and 6, of range 16.

The part of township one outside of the Sac and Fox reservation; township 2; the parts of townships 3, 4, and 5 outside of the half-breed Nemaha reservation; and fractional township 6, of range 15.

The part of township one outside of the Sac and Fox reservation; townships 2, 3, and 4; the part of township 5 outside of the half-breed Nemaha reservation; and township 6, of range 14.

Townships 1, 2, 3, 4, 5, and 6, of range 13.

Townships 1, 2, 3, 4, 5, and 6, of range 12.

Townships 1, 2, 3, 4, 5, and 6, of range 11.

Townships 1, 2, 3, 4, 5, and 6, of range 10.

At the land office at Brownsville, commencing on Monday, the fifth day of September next, for the disposal of the public lands within the following named townships, viz:

61 North of the base line and east of the sixth principal meridian.

Townships 1, 2, 3, 4, 5, and 6, of range 9.

The parts of township 1 and 2 outside of the Indian reservation, and townships 3, 4, 5, and 6, of range 8.

The part of township two outside of the Indian reservation, and townships 3, 4, 5, and 6, of range 7.

The part of township two outside of the Indian reservation, and townships 3, 4, 5, and 6, of range 6.

The part of township two outside of the Indian reservation, and townships 3, 4, 5, and 6, of range 5.

The parts of townships 1 and 2 outside of the Indian reservation, and townships 3, 4, 5, and 6, of range 4.

At the land office at Nebraska City, commencing on Monday, the first day of August next, for the disposal of the public lands within the following townships, viz:

North of the base line and east of the sixth principal meridian.

Fractional township 7, of range 16.
Fractional townships 7 and 8, of range 15.
Township 7, and fractional townships 8, 9, 10, 11, and 12, of range 14.
Townships 7, 8, 9, 10, 11, and 12, and fractional township 13, of range 13.
Townships 7, 8, 9, 10, and 11, and fractional townships 12 and 13, of range 12.
Townships 7, 8, 9, 10, and 11, and fractional township 12, of range 11.
Townships 7, 8, 9, 10, and 11, and fractional townships 12, 13, and 14, of range 11.
Townships 7, 8, 9, 10, 11, 12, and 13, and fractional townships 14, 15, and 16, of range 9.

62 At the land office at Nebraska City, commencing on Monday, the twenty-ninth day of August next, for the disposal of the public lands within the following-named townships, viz:

North of the base line and east of the sixth principal meridian.

Townships 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, and fractional township 17, of range 8.
Townships 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, and fractional town- 17, of range 7.
Townships 7, 8, 9, 10, 11, 12, 13, 14, and 15, of range 6.

At the land office at Omaha City, commencing on Tuesday, the fifth day of July next, for the disposal of the public lands within the following named townships, viz:

North of the base line and east of the sixth principal meridian.

Fractional townships 13, 14, 15, and 16, of range 14.
Fractional townships 13, 14, 15, 16, and 17, of range 13.
Fractional townships 12 and 13; townships 14, 15, 16, and 17; and fractional townships 18, 19, 20, 21, and 22, of range 12.
Fractional township 12; townships 13, 14, 15, 16, 17, and 18; and fractional townships 19, 20, 21, 22, and 23, of range 11.
Fractional townships 12, 13, and 14; townships 15, 16, 17, 18, 19, 20, 21, 22, and 23, of range 10.

At the land office at Omaha City, commencing on Monday, the twenty-fifth day of July next, for the disposal of the public lands within the following named townships, viz:

North of the base line and east of the sixth principal meridian.

Fractional townships 14, 15, and 16; townships 17, 18, 19, 20, 21, 22, and 23, of range 9.
Fractional townships 16 and 17; and townships 18, 19, 20, and 21, of range 6.
63 Fractional township 17, and townships 18, 19, 20, and 21, of range 7.

Fractional township 17, and townships 18, 19, 20, and 21, of range 6.
Fractional township 17, and townships 18, 19, 20, and 21, of range 5.
Fractional township 17, and townships 18, 19, 20, and 21, of range 4.

At the land office at Dakota, commencing on Monday, the eighteenth day of July next, for the disposal of the public lands within the following named townships, viz:

North of the base line and east of the sixth principal meridian.

Fractional township 27, of range 10.
The parts of townships 24 and 27 outside of the Indian reservation; and fractional townships 28 and 29, of range 9.
The part of township 27 outside of the Indian reservation, township 28, and fractional townships 29 and 30, of range 8.
The part of township 27 outside of the Indian reservation, townships 28 and 29, and fractional township 30, of range 7.
The part of township 27 outside of the Indian reservation, townships 28 and 29, and fractional townships 30 and 31, of range 6.

Lands appropriated by law for the use of schools, Indian, military, and other purposes will be excluded from the sales.
The offering of the above lands will be commenced on the days appointed, and will proceed in the order in which they are advertised until the whole shall have been offered and the sales thus closed; but no sale shall be kept open longer than two weeks, and no private entry of any of the lands will be admitted until after the expiration of the two weeks.

64 Given under my hand, at the city of Washington, this 22nd day of March, anno Domini one thousand eight hundred and fifty-nine.

JAMES BUCHANAN.

By the President:
THOMAS A. HENDRICKS,
*Commissioner of the General Land Office.*

*Notice to pre-emption claimants.*

Every person entitled to the right of pre-emption to any of the lands within the townships and parts of townships above enumerated is required to establish the same to the satisfaction of the register and receiver of the proper land office, and make payment therefor as soon as practicable after seeing this notice, and before the day appointed for the commencement of the public sales of the lands embracing the tract claimed; otherwise such claim will be forfeited.

THOS. A. HENDRICKS,
*Commissioner of the General Land Office.*

NOTE.—Under the regulations of the department as heretofore and now existing no payment can be made for advertising proclamations except to such publishers as are specially authorized to publish by the Commissioner of the General Land Office.

65 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *October* 7, 1874.

I, S. S. Burdett, Commissioner of the General Land Office, do hereby

certify that the annexed are true and literal exemplifications of the originals now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] S. S. BURDETT,
*Commissioner of the General Land Office.*

Receiver's receipt. No. 288.

*Homestead.*

RECEIVER'S OFFICE,
*Nebraska City, June* 13, 1864.

Received of Francis G. Starks the sum of eleven dollars 98 cents, being the amount of fee and compensation of register and receiver for the entry of NE. of NE., sec. 24, T. 10, R. 6, & N. ½ of NW. ¼ &
66 NW. of NE. ¼ of section 19, in township 10 north, of range 7 east, under the act of Congress, approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain."

$11.98.] W. H. H. WATERS,
*Receiver.*

[Enclosure.]

G.] [A. N. H

DEPARTMENT OF THE INTERIOR, [C. W. H.
GENERAL LAND OFFICE,
44—318.] *Washington, D. C., Oct. 7th,* 1874.

Messrs. J. M. ROBINSON & Co.,
*Lincoln, Neb.:*

GENTLEMEN: I am in receipt of your letter of the 11th ult., enclosing twenty dollars ($20.00) for certified copies of testimony and other papers in the cases of Francis G. Stork vs. C. E. Van Pelt, Mathias Ziedhut vs. Mary Bohansky, and James M. Johnson vs. Joseph Bohansky, Lincoln, Neb. I herewith enclose certified copy of testimony and other papers in the case of said Stark vs. Van Pelt, together with abstract of the NW. ¼ of NE. ¼ and N. ½ of NW. ¼, sec. 19, 10 T., 7 E.; the costs for
67 said copy is seventy-six dollars ($76.00), leaving a balance of fifty-six dollars ($56.00) due this office on the enclosed, which you will please remit.

The probable amount of costs for copies in the cases of Zeidhut vs. Bohansky, and Johnston vs. Bohansky, is nineteen dollars ($19.00), which copies will be furnished you upon receipt of that amount.

Please acknowledge receipt of this.

Very respectfully,

S. S. BURDETT,
*Commissioner.*

*Application.*

No. 288.] LAND OFFICE AT NEBRASKA CITY,
*June* 13, 1864.

I, Francis G. Starks, of Lancaster Co., N. T., do hereby apply to enter under the provisions of the act of Congress approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain," the NE. ¼ NE. ¼, S. 24, T. 10, R. 6, & N. ½ NW. ¼ & NW. ¼ NE. ¼ of section 19, in township 10 north, of range 7 east, containing 158.78 acres.

his
FRANCIS G. + STARK.
mark.

(Across the face:) Canceled fee to R. & R., July 12, '66.

68 LAND OFFICE AT NEBRASKA CITY,
*June* 13*th*, 1864.

I, Royal Buck, register of the land office, do hereby certify that the above application is for surveyed lands of the class which the applicant is legally entitled to enter under the homestead act of May 20, 1862, and that there is no prior valid adverse right to the same.

ROYAL BUCK,
*Register.*

*Affidavit.*

LAND OFFICE AT NEBRASKA CITY,
*June* 13*th*, 1864.

I, Francis G. Stark, of Lancaster Co., N. T., having filed my application No. 288, for an entry under the provisions of the act of Congress, approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain," do solemnly swear that I am the head of a family, and a citizen of the United States; that I have never borne arms against the Government, nor given aid or comfort to its enemies; that said application No. 288 is made for the purpose of actual settlement and cultivation; that said entry is made for my own exclusive benefit, and
69 not directly or indirectly for the benefit or use of any other person or persons whomsoever; neither have abandoned an entry heretofore made under this act.

his
FRANCIS G. + STARK.
mark.

Sworn to and subscribed this 13th day of June, 1864, before
ROYAL BUCK,
*Register of the Land Office.*

*Homestead.*

RECEIVER'S OFFICE, NEBRASKA CITY,
*June* 13, 1864.

Received of Francis G. Starks the sum of eleven dollars 98 cents, be-

ing the amount of fee and one-half the compensation of register and receiver for the entry of NE. ¼ NE. ¼ S. 24, T. 10, R. 6, & N. ½ NW. ¼ & NW. ¼ NE. ¼ of section 19, in township 10 north, of range 7 east, under the act of Congress approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain." $11.98.]

W. H. H. WATERS,
*Receiver.*

(Endorsed:)

To the register and receiver of the land office at Nebraska City:

70 SIR: I hereby notify you that I this day abandon the within-described homestead to James L. Porter.

his
FRANCIS G. + STARK.
mark.

Attest:
J. M. YOUNG.
J. M. MCKESSON.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*July* 12, 1866.

Register and Receiver, Nebraska City, Neb.:

GENTLEMEN: The following homestead entries have this day been canceled, the parties having relinquished their respective claims to the tracts embraced therein, viz, * * * Francis G. Stark, 288 * * * You will note the cancellations on your books, referring to the date of this letter.

Very respectfully,

J. M. EDWARDS,
*Commissioner.*

Francis G. Stark, of Logan Creek, in Washington County, Nebraska Territory, being the head of a family & a citizen of the U. States, have since the 10th day of March, A. D. 1860, settled the northeast
71 quarter of section number nine, township number nineteen, range eight, in the district of land subject to private entry, at the land office at Omaha, and containing one hundred and sixty acres; and I do hereby declare my intention to claim the said tract of land as a pre-emption right under the provision of the act of the fourth of September, A. D. 1841.

Given under my hand the tenth day of March, one thousand eight hundred and sixty.

FRANCIS G. STARKS. +

Signed in presence of—
GEO. A. NEWMAN.

#141.] Francis G. Stark, of Logan Creek, Washington County, and Territory of Nebraska, being the head of a family and a citizen of the United States, have this first day of August, A. D. 1860, settled the south ½ of NE. ¼ and south ½ of NW. ¼ of sec. No. 10, township 19, range 8 east;

and I do hereby declare my intention to claim the said tract of land as a pre-emption right under the provisions of the act of Sep. 4th, 1841.

Given under my hand this 28th day of August, 1860.

FRANCIS G. STARK.

Signed in presence of—
GEO. A. NEWMAN.

#239.]

72 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*June 10th*, 1868.

Register & Receiver, Nebraska City, Neb.:

GENTLEMEN: I have received letter from S. G. McCracken, of Nebraska City, inclosing the application of F. G. Stark to be reinstated in his homestead entry No. 288, made June 13th, 1864, for the NE. ¼ NE. ¼ 24, 10, 6, & the N. ½ NW. ¼ & NW. ¼ NE. ¼ 19, 10, 7. It appears from the affidavit of Mr. Stark that he was fraudulently induced to surrender his duplicate receipt, and that it was never his intention to relinquish or abandon his entry, no information of the cancellation of the same having reached him until at a very recent date; that he has continued to reside upon and cultivate the tract embraced in his entry. As the NE. ¼ NE. ¼ 24, 10, 6 has since been entered by another party, he asks that his entry may be reinstated as to the remainder. Relative thereto,

73 I have to state that if Mr. Stark will show by the testimony of two competent witnesses that he has never abandoned the tract embraced in his homestead entry, but has in every manner fulfilled the requirements of the law up to the present date, he will be allowed to do so within thirty days from date of notice, and if the same shall be satisfactory to this office his entry will be reinstated.

You will therefore inform him of this decision, and call upon him to file the testimony as above contemplated within the designated time. If so filed you will forward the same without delay, otherwise at the expiration thereof you will promptly advise this office.

Very respectfully,

J. S. WILSON,
*Commissioner.*

STATE OF NEBRASKA,
*County of Lancaster, ss:*

Milton Langdon, of said county, being duly sworn, doth depose and say, that he is county treasurer of said county of Lancaster, and has lived in said county for six years last past; that he has known Francis G. Stark, who claims, or did claim, a homestead on the NE. ¼ of the NE. ¼ of section

74 24, in T. 10 N., of range 6 E.; and then forty-acre tracts on section No. 19. in Town, T. 10 N., of range 7 E.; that some time in the fall of 1865, said Stark sold out said homestead to James L. Porter, and soon after left said homestead and removed from the county of Lancaster, and did not return to said homestead, or any portion thereof, until some time after the capital of the State was located here at Lincoln, which location was made on or about the first day of September, 1867; said Starks informed this affiant

in the fall of 1865 that he had sold out his homestead to James L. Porter, and abandoned the same to James L. Porter.

M. LANGDON,
*Lancaster Co., Neb.*

[L. S.] H. S. JENNINGS,
*Notary Public.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*Sept.* 2, 1868.

Register and Receiver of Nebraska City, Neb.:

GENTLEMEN: Referring to ours of the 10th June last, I have
75 to acknowledge the receipt of yours of the 18th July, enclosing affidavits in support of the deposition of Francis G. Stark, asking to be reinstated in his homestead entry No. 288, for the NE. ¼ N. E. ¼ sec. 24, T'p 10, R. 6, & N. ½ NW. ¼ & NW. ¼ NE. ¼ sec. 19, T'p 10, R. 7 E., canceled by this office July 12, 1866, on the ground of relinquishment. I am also in receipt of the receiver's letter of 21' July last, enclosing deposition which positively assert' that Mr. Stark did relinquish his entry & abandon the same for a period of about one year.

In view of such allegations this office now reinstate' the entry, but in order that the facts may be properly brought before us so that the case can be equitably adjusted, I have to request that you order a hearing giving all the parties in interest due notice of the time and place of trial.

Thereafter transmit the testimony to this office with your joint report for our further action in the case.

Very respectfully your ob't serv't,

JOS. S. WILSON,
*Commissioner.*

76 U. S. LAND OFFICE,
*Lincoln, Neb., Oct. 22nd,* 1868.

Hearing in the case of homestead No. 288, by Francis G. Stark, dated June 18, 1864, and cancelled July 12, 1866, as directed by Com. letter of Sept. 2, 1868.

FRANCIS G. STARK
*vs.*
H. L. JENNINGS ET AL.

J. L. PORTER, being first duly sworn, deposes and says, in answer to the following interrogatories, to wit:

Inter'og. 1st. What is your name, place of residence, and age?

Ans. 1. My name is J. L. Porter; I am 53 years of age; I reside in Lancaster County, Nebraska.

Inter'og. 2. How long have you lived in said county and State?

Ans. 2. Two years and seven months.

Inter'og. 3. Are you acquainted with Francis G. Stark, the plaintiff in this case?

Ans. 3. I am.

Inter'og. 4. State whether or not you are acquainted with the

77 land in controversy between the parties in this case; and, if so, what you know about it.

Ans. 4. I know the land in controversy. Francis G. Stark occupied it as a homestead when I came here in Nov., 1865; the fall before I moved my family here. I purchased his (Starks) interest in the said land, and paid him one hundred and sixty dollars for the same about the 29th of November, 1865, and he (Starks) signed his abandonment to me at that time upon the back of the homestead duplicate receipt which he then had. I afterwards gave the duplicate receipt to the register in the United States land office at Nebraska City, and made application to take the said land as a homestead, but upon my return the following spring, in April, to Nebraska City, I was informed by the register of the said land office in Nebraska City that that portion of the homestead in section No. 19, town. 10, range 7, being the north half of the northwest quarter, and the northwest quarter of the northeast quarter, was withdrawn for railroad purposes, so I did not take the 40 acres in section 24 of the same

78 town and range six (6), being the NE. ¼ of NE. ¼, for the reason that I thought it was not enough to consume my right of homestead, & hence I abandoned it.

Inter'og. 5th. State, if you can, when Stark moved away from the land.

Ans. 5th. Some time during the winter or spring of 1866, when I came back in April, 1866, with my family, he (Starks) was gone.

Inter'og. 6th. State whether or not the said Starks has since resided upon the said land.

Ans. 6. I have not seen him occupying or living upon the land since, and am positive that he did not live upon it for more than eighteen months after I moved on the said land in April, 1866.

J. L. PORTER.

Subscribed and sworn to before me this 22d day of October, 1868.

S. McCONIGA,
*Register.*

79 J. M. RIDDLE, first being duly sworn, in reply to the following interrogatories, deposes and says:

Inter'og. 1st. What is your name, age, and place of residence?

Ans. 1. My name is James M. Riddle; I am 41 years of age, and I reside in Lancaster County, Nebraska.

Inter'og 2nd. How long have you resided in said county and State?

Ans. 2. Since the 15th day of June, 1865.

Inter'og. 3rd. Are you acquainted with Francis G. Stark, and how long have you known him?

Ans. I am acquainted with Francis G. Stark, and have know' him about three years.

Inter'og. 4th. Are you acquainted with the land which is now in controversy and which he (Starks) claims as a homestead?

Ans. 4. I know the land in controversy. I live about five miles from the said land.

80 Inter'og. 5th. State when he (Stark) moved away from the land.

Ans. 5th. Stark left the land in controversy and moved his family away from it in March, 1865, and went to live on Stevens Creek,

about seven miles from the place, and I think he soon afterward moved to Nebraska City.

Inter. 6. State how long Stark was gone with his family from the land in controversy.

Ans. 6. He was away I think about two years.

Inter'og. 7. State whether or not Stark at any time returned to occupy the land in controversy, either by himself or with his family, during the time you have stated he was away.

Ans. 7. He did not. I think he (Stark) came back to Lancaster County last fall after the location of the State capitol here, but he did not move upon the land now in controversy till spring.

J. M. RIDDEL.

81 Subscribed and sworn to before me this 22nd day of October, 1868.

S. McCONIGA, *Register.*

We hereby certify that the foregoing testimony was taken before us at the time and place specified above. The evidence adduced shows that Mr. Stark, in the year 1865, sold his claim to the land for $160.00, voluntarily surrendered his duplicate with his relinquishment endorsed thereon, moved off the land, and did not return until the summer of 1867, about the time of the location of the State capitol at this place. We cannot therefore recommend that his right be reinstated.

S. McCONIGA, *Register.*
H. KENNEDY, *Receiver.*

UNITED STATES LAND OFFICE,
*Nebraska City, Neb., July* 21, 1868.

Commissioner General Land Office:

SIR: Referring to your letter of June 10th, and one letter of July 18th, relating to the homestead case of F. G. Stark, we herewith
82 transmit the affidavits of Smith B. Galey, Milton Langdon, H. S. Jennings, & James L. Porter, which have this day been filed in this office.

Very respectfully, your ob't serv't,

H. RENNEDY, *Receiver.*

S. McCONIGA, *Register.*

STATE OF NEBRASKA,
*County of Lancaster, ss:*

Martin Hammond, of lawful age, being produced and sworn upon his oath, says that he is acquainted with F. G. Stark, and has been for years; that Mr. Stark is an old man nearly sixty years of age, and a man of very delicate health; he is the head of a family, having a wife a few years younger dependent upon him for support. I am also acquainted the N. ½ of NW. ¼ and the NW. ¼ of the NE. q'r sec. 19, town. 10, range 7 east, having lived upon an adjoining tract of land for years; that at that time I first became acquainted with Mr. Stark; he was residing
83 upon said tract of land; Mr. Stark had a house upon said tract of land in which he resided; upon that he had a portion of said land in cultivation, and that Mr. Stark has been and resided upon said land;

and that he is now residing upon said land with his family, and still has the portion of the same in cultivation; and affiant further states that from his daily intercourse with Mr. Stark, that Mr. Stark from the time that this affiant became acquainted with Mr. Stark that he never intended to abandon said tract of land; that affiant was present at the time the parties were trying to get Mr. Stark to sell or relinquish his homestead upon said tract of land; and that Mr. utterly refused to sell or relinquish his right to the land that he now ask' to be reinstated upon, being the land above described; and deponent further says that he knows that Mr. Stark has never been off from said land for any considerable time; that Mr. Stark was off of said land at one time nearly six months for the purpose of procuring medical treatment for a disease that he had been laboring under for years; and that as soon a' his health was sufficiently re-
84 stored to permit, he returned to said land, and has resided upon ever since; and affiant further says that Mr. Starks has in good faith, as far as his health and circumstances would permit, fulfilled all the requirements of the homestead law, and further affiant saith not.

MARTIN HAMMOND.

Subscribed in my presence and sworn to before at Lincoln, in Lancaster County and State of Nebraska, this 3rd day of July, A. D. 1868.

J. CADMAN,
*Probate Judge.*

STATE OF NEBRASKA,
*County of Lancaster, ss:*

Sidney Reese, of lawful age, after first being duly sworn, upon his oath says that he has been intimately acquainted with F. G. Stark for more than 10 years; that Mr. Stark has resided the last four years in Lancaster County and State of Nebraska; that some time in June or July of the year, A. D. 1864, that Mr. Stark moved upon the N. ½ of NW. ¼
85 and the north W. ¼ of the northeast q'r S. 19, T. 10, R. 7 east, as a homestead; he erected a house upon said land and reduced a portion of said land to cultivation; that Mr. Stark resided continuously on said land from the time of his first settlement for two years, at which time he was absent from said land for about five months, at which time he returned to said land; has continued to reside upon and cultivate the same up to the present time; that Mr. Stark has a house and 6 acres broke and in cultivation; and affiant further states that he knows of his own knowledge that Mr. Stark has never at no time relinquished his claim to or abandoned the tract of land above described; affiant further states that Mr. Stark is a man in very limited circumstances and very poor health; that he has done all his circumstances and health would permit to fulfill all the requirements of the homestead law, and further affiant saith not.

SIDNEY REESE.

Subscribed in my presence and sworn to before me at Lincoln, in Lancaster County, and State of Nebraska, this 3rd day of July, A.
86 D. 1868.

J. CADMAN,
*Probate Judge.*

STATE OF NEBRASKA,
*County of Lancaster, ss:*

I, John Cadman, probate judge in and for said county, do certify that the above-named Martin Hammond & Sydney Reese were first duly sworn by me to testify the truth, the whole truth, and nothing but the truth, that the testimony was reduced to writing and subscribed in my presence; that I am acquainted with said witnesses; that they creditable witnesses and every way worthy of belief.

In witness whereof I have hereunto set my hand and seal of office, at Lincoln, this 3rd day of July, A. D. 1868.

[L. S.] J. CADMAN,
*Probate Judge.*

To the Commissioner of the General Land Office:

Your petitioner, F. G. Stark, would respectfully state that he is a citizen of the United States and a married man and the head of a
87 family; that some time in the month of June, A. D. 1864, he entered as a homestead the northwest ¼ of the northeast quarter and the north half of the northwest quarter of section 19, township 10, range 7, and the northeast ¼ of the northeast quarter of section 24, township 10, range 6 east; that your petitioner immediately thereafter erected a house on said tract of land and moved on it with his family and has continued to reside thereon to the present time, with the exception of five or six months that your petitioner was absent for the benefit of his health. Your petitioner further states that after he had resided upon said tract of land for more than two years and some time in the month of August, A. D. 1866, your petitioner being in very straitened circumstances, and at the urgent request of one Porter and others, contracted to sell, and did sell, his right to northeast ¼ of the northwest quarter of sect. 24, township 10, range 6 east, and then and there agreed to relinquish his homestead right to the last-described tract of land.

Your petitioner further states that said Porter the others
88 then and there represented to your petitioner that your petitioner would not be permitted to finally consum'ate his homestead to the said last-described tract of land for the reason that said tract of land was in a different township and range from the main body of his homestead.

Your petitioner further that after he was so induced to sell said portion of his homestead by the false and fraudulent representation aforesaid that your petitioner was induced to *to* and did deliver his certificate of homestead to the said Porter to take to the land office and have your petitioner' homestead on said forty acres canceled, and for no other purpose. And your petitioner further states that said Porter then and there promised and agreed to return said certificate to your petitioner; and your petitioner further avers that he never assigned said certificate to said Porter or to any other person whomsoev'; and your petitioner that said certificate was never returned to your petitioner, but, on the contrary, as your petitioner is informed and verily believes, said certificate was secretly and fraudulently sent to the Commissioner of the General Land Office for the purpose of having your petitioner's homestead cancelled and
89 set aside.

Your petitioner further states that he never had any knowledge,

either directly or indirectly, that his said homestead was cancelled, but fully believed that he had a good, valid, and subsisting homestead, on the one hundred twenty acres first above described, until a few weeks ago he made application to the land officers at Nebraska City, Nebraska, to commute his homestead, under the eighth section of the homestead act, and was informed, by said officers that his homestead had been canceled for voluntary abandonment. And your petitioner avers that from the time he moved on said tract of land, in June, A. D. 1864, that he at no time ever voluntarily abandoned his homestead on said tract of land (except as to the forty acres) as aforesaid, but on the contrary that he has continued and does now reside upon said tract of land as his home with his family. Your petitioner further states that there is no person claiming the said one hundred an' twenty acres.

Your petitioner therefore respectfully asks that the cancellation of his said homestead, as to the one hundred and twenty acres first described, be set aside, and that your petitioner may be permitted to commute his homestead under the eighth section of the homestead act.

F. G. STARKS.

STATE OF NEBRASKA,
*County of Otoe:*

The above-named F. G. Starks, after being duly sworn, upon his oath says that the matters and things set forth in the foregoing petition are true in substance and in fact.

F. G. STARK.

Subscribed in my presence and sworn before this 25th day of May, A. D. 1868.

[L. S.] A. J. HALE,
*Notary Public.*

STATE OF NEBRASKA,
*County of Lancaster, ss:*

Smith B. Galey, of Lincoln, in said county, being duly sworn, doth depose and say that he is acquainted with Francis G. Starks, who now resides upon a portion of the northwest quarter of section No. 19, in town. ten N., in range 7 east, in Lancaster County, and claims the same as a homestead; that some time prior to the summer of 1866 the said Francis G. Starks took three 40-acre pieces on said section 19th, together with the NE. ¼ of the NE. ¼ of sec. 24, in town. 10 N. of range 6 east, as a homestead, and after occupying the same for a short time he sold, or pretended to sell out his right to one J. L. Porter, and left the said homestead; that in July, 1866, this affiant took the NE. ¼ of NE. ¼ of sec. 24, township No. 10 N., of range No. 6 E., by pre-emption; that at that time there was no one occupying the same or any portion of the land claimed by said Starks as a homestead, and this affiant continued to occupy said land for one year or thereabouts, up to the 8th day of July, 1867, when he proved up his pre-emption and entered the same; that during the whole time and for some time thereafter there was no other occupant or claimant upon either the NE. ¼ of NE. of sec. 24, township 10 N., of range 6 east, or upon any portion of the NW. ¼ of section 19, in

township No. 10 N., of range 7 east, nor were any improvements
92 made upon any portion of said land, except such as were made by this affiant. Said Starks did not reside upon any portion of the land, nor was there any house, shanty, or residence thereon, except the one erected and occupied by this affiant.

That about the first day of September, 1867, the State capitol was located at Lincoln, near said above described land, and afterwards the said Francis G. Starks, for the first time, built a dug-out (so called) upon the NW. ¼ of sec. 19, and moved into the same; that prior to that time, for more than a year, there had been no occupant or claimant except this affiant. And this affiant further says that he, this affiant, paid to J. L. Porter, who purchased the right of said Francis G. Starks, the sum of forty dollars to induce him to release said NE. ¼ of NE. ¼ of section 24, in town. No. 10 N., of range No. 6 east.

S. B. GALEY.

Subscribed to in my presence and sworn to before me on this 17th day of July, 1868.

[L. S.] H. S. JENNING,
*Notary Public, Lancaster Co., Neb.*

93 STATE OF NEBRASKA,
*County of Lancaster, ss:*

James L. Porter, of said county, being duly sworn, doth depose and say that on or about the 30th day of November, A. D. 1865, he, this affiant, purchased of Francis G. Stark his right, title, and interest in and to the NE. ¼ of NE. ¼ of sec. 24, township No. 10 N., of range No. 6 E., and three 40-acre parcels on sec. No. 19, in township No. 10 N., of range No. 7 E., which said Starks claimed as a homestead; that said Starks thereupon abandoned the said above described land and removed from the same, and did not return to it or live upon it, or in any manner occupy it until some time after the capitol was located at Lincoln.

JAMES L. PORTER.

Subscribed in my presence and sworn to before me this 18th day of July, 1868.

[L. S.] S. B. GALEY,
*Clerk of the Dist. Court of Lancaster County, Nebraska.*

94 UNITED STATES LAND OFFICE,
*Nebraska City, Neb., July 18th,* 1868.

Commissioner General Land Office:

SIR: Referring to your letter of June 10, 1868, relating to the application of F. G. Stark to be reinstated in his homestead entry No. 288, made June 13, 1864, upon NE. ¼ NE. ¼, 24, 10, 6, & N. ½ NW. ¼ & NW. ¼ NE. ¼, 19, 10, 7, we herewith transmit the affidavit of Martin Hammond & Sidney Reese, relative to the occupancy by Mr. Stark of a part of said homestead; the other portion, viz, NE. ¼ NE. ¼, sec. 24, T. 10, R. 6, was entered under the pre-emption act July 8, 1867, by Smith B. Galey, D. S. 682, cash entry No. 855. We therefore recommend that before the case is

finally disposed of an investigation may be ordered, giving all parties interested an opportunity to appear.

Very respectfully, your ob't serv't,

S. McCONIGA, *Register.*
H. KENNEDY, *Receiver.*

95 STATE OF NEBRASKA,
*County of Lancaster, ss:*

H. S. Jennings, of said county, being duly sworn, doth depose and say that he knows Francis G. Starks; that said Starks has repeatedly informed this affiant during the last few weeks that he abandoned long ago the NE. ¼ of NE. ¼ of section No. 24, in town. 10 N., of range 6 east, in Lancaster County; that he had not for a long time claimed or occupied the same as a homestead or intended to exercise any control, or make any claim to the same; that said NE. ¼ of NE. ¼ of sec. 24 was pre-empted by S. B. Galey in a wild or entirely uncultivated state, and was subsequently entered by him, and that the whole of said 40 acres has since been put under cultivation.

H. S. JENNINGS.

Subscribed and sworn to before me July 17th, 1868.
[L. S.] J. CADMAN,
*Probate Judge.*

96 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *Dec.* 17, 1868.

REGISTER & RECEIVER, *Lincoln, Neb.:*

GENTLEMEN: I am in receipt of yours of the 1st inst. enclosing testimony taken at the hearing ordered by our letter of the 2nd Sept. last, in case of the homestead entry of Francis G. Stark, No. 288, for the NE. ¼ NE. ¼, sec. 24, t'p 10, R. 6, & N. ½ NW. ¼ & NW. ¼ NE. ¼, sec. 19, t'p 10, R. 7 E., made June 13th, 1864, which entry was canceled by this office 12th July, 1866, Mr. Stark having relinquished his claim to the same. Mr. Stark made application to be reinstated in his entry, but on receiving depositions adverse to his right to the above tracts a hearing was ordered.

Due notice of such hearing was issued by you but claimant failed to appear.

The testimony shows that in November, 1865, for the consideration of $160.00, Mr. Stark relinquished and abandoned his entry and has
97 not since resided upon it, in view of which fact our action in cancelling the entry is sustained. You will notify all parties in interest of this decision.

Very respectfully, your ob't serv't,

JOS. S. WILSON,
*Commissioner*

U. S. LAND OFFICE,
*Lincoln, Neb., June* 22, 1870.

COMMISSIONER:

SIR: I herewith transmit an application by Francis G. Stark to enter under the pre-emption law the NW. ¼ of NE. ¼ & N. ½ NW. ¼ of section No. 19, town. 10 N., range 7 east, 120 acres. The proof shows that

Mr. Stark has lived on this land since the month of June, 1864, which he then held as a homestead, No. 288.

Mr. Stark is an old and very illiterate man, and claims that cancelling of his homestead (see Com's letter July 12th, 1866) was a fraud,
98 but is willing to let that rest as it is and pay for the land under the pre-emption law.

It is our opinion that Mr. Stark ought to have the land; he is old and poor, and has suffered many privations incident to a frontier life during the last six years; and there being no adverse claimant on the land, and he a bona fide settler, we recommend that he be allowed to enter said land. From personal acquaintance with the witness we can vouch for the credability of the testimony submitted.

Very respectfully,

S. M. CONIGA, *Register.*
W. F. CHAPIN, *Receiver.*

*Declaratory statement.*

I, Francis G. Stark, of the county of Lancaster and State of Nebraska, being head for a family and a citizen of the United States, did, in the month of June, A. D. 1864, settle and improve the NW. of NE. &
99 N. ½ of NW. ¼ *quarter*, of section number 19, in township number 10 north, range number 7 east of 6th principal meridian, in the district of lands subject to sale at the land office at Lincoln, in the State of Nebraska, and containing 120 acres; which land has been offered at public sale and thus rendered subject to private entry, and I do hereby declare my intention to claim the said tract of land as a pre-emption right under the provisions of the act of 4th September, A. D. 1841.

Given under my hand this 17th day of June, A. D. 1870.

his
FRANCIS G. STARK.
mark.

In presence of—
S. McCONIGA.

I, George A. Newman, do solemnly swear that I have known Frances G. Starks over seven years; that he is head of a family, and is a citizen of the United States, and is an inhabitant of the NW. of NE. & N. ½ of NW. ¼ *quarter*, of section No. 19, of township No. 10 north, of range No. 7 east, and that no other person resided upon the said land entitled
100 to the right of pre-emption; that the said Francis G. Stark entered upon and made a settlement in person on the said land in the month of June, 1864, and built a house thereon of sod, and moved in the said house, in which he lived (and a better house afterward built) for ever three years that I know. I then left this part of the county for near one year. The said Stark is now living on said land and has so lived since my return to this place, for over the two years last past, and has built the third house on said land, and has lived in said house and the others referred to, and made it his exclusive home *as* above stated day till the present time; that he did not remove from his own land within the State of Nebraska to make the settlement above referred to, and that he has since said settlement plowed, fenced, and cultivated about 25 acres of said land and set out about two hundred trees.

GEORGE A. NEWMAN.

I, William McClintick, do solemnly swear that I became acquainted with Francis G. Stark five years coming 1st of July next; that he
101 was then living on the above described land, and that he is head of a family and a citizen of the United States, and has been living constantly upon said land for over two years last past. I was absent a part of the time from this part of the county. I know Mr. Stark to be an actual settler, one who has done all he could to improve said land.

WM. McCLINTICK.

I, S. McConiga, do hereby certify that the above affidavit was taken and subscribed before me this 17th day of June, A. D. 1870.

We certify that Geo. N. Newman & W. McClintick, whose name' are subscribed to the foregoing affidavit, are person' of respectability.

S. McCONIGA, *Register.*
*Receiver.*

We, Sidney Reese & Sarah C. Reese, of Lancaster County, Nebraska, do solemnly swear that we have known Francis G. Stark over six
102 years; that he is head of a family and a citizen of the United States, and is an inhabitant of the NW. ¼ of NE. ¼ & N. ½ of NW. ¼ *quarter* of section No. 19, of township No. 10 north, of range No. 7 east; and that no other person resided upon the said land, entitled to the right of pre-em'tion; that the said Francis G. Stark entered upon and made a settlement in person on said land in June, 1864, and has built three houses on said land, and has lived in said houses (the first house was destroyed by the floods), and made it his home from the first of June, 1864, till the present time, with the exception of one summer, when he went to the Missouri River, and was taken sick, but returned to said land as soon as he was able, and has lived on said land and made it his exclusive home from the first day of June, 1864, till the present time, excepting the absences referred to; that he did not remove from his own land within the State of Nebraska to make the settlement above referred to, and that he has since said settlement plowed and cultivated about
103 twenty-five acres of said land, and set out over two hundred trees. Mr. Stark is a poor man, and in poor health, and to my personal knowledge has improved said land to the utmost extent of his ability; he has no team, is an old man, and an actual settler.

his
SIDNEY + REESE.
mark.
SARAH C. REESE.

I, S. McConiga, do hereby certify that the above affidavit was taken and subscribed before me this 17th day of June, A. D. 1870.

We certify that Sidney & Sarah Reese, whose name' are subscribed to the foregoing affidavit, are person' of respectability.

S. McCONIGA, *Register.*
*Receiver.*

104 (Endorsed:)

I, Francis G. Stark, claiming the right of pre-em'tion under the provisions of the act of Congress entitled "An act to approp'ate the proceeds of the public lands, and to grant pre-emption rights," approved September 4, 1851, to the NW. of NE. & N. ½ of NW. ¼ *quarter* of section number 19, of township number 10 north, range number 7 east, subject to sale at land office at Lincoln, Neb., do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to approp'iate it to my exclusive use or benefit, and that I have not, directly or indirectly, made any agreement or contract in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States would inure in whole or in part to the
105 benefit of any person except myself.

his
FRANCIS + G. STARK.
mark.

I, S. McConiga, register of the land office, do hereby certify that the above affidavit was taken and subscribed before me this 17th day of June, A. D. 1870.

S. McCONIGA, *Register*.

Certificate No.

*Proof of right of pre-emption of Francis G. Stark upon N. ½ NE. & NE. of NW. ¼, sec. 19, T. 10 N., R. 7 E. W.—Pre-emption act 4th September, 1841.*

LAND OFFICE AT LINCOLN, NEBRASKA,
*June* 17, 1870.

I, Francis G. Stark, of Lancaster County, Neb., do hereby apply to purchase the NW. of NE. & N. ½ of NW. ¼, section 19, in township 10 N., of range 7 east, containing 120 acres according to the returns of
106 the surveyor-general, for which I have agreed with the register to give at the rate of per acre.

his
FRANCIS + G. STARK.
mark.

I, S. McConiga, register of the land office at , do hereby certify that the lot above described contains 120 acres, as mentioned above, and that the price agreed upon is acre.

S. McCONIGA, *Register*.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *July 8th*, 1870.

REGISTER & RECEIVER,
*Lincoln, Nebraska:*

GENTLEMEN: I am in receipt of your letter of 22 ult., inclosing the application of Francis G. Stark to pre-emption the NW. ¼ NE. ¼ and N

½ NW. ¼ sec. 19, T. 10 N., R. 7 E., with accompanying proof, affidavit, &c.

107 In reply I have to state that it appears from our records that said tracts were embraced in the homestead entry, No. 288, of Mr. Stark, which was canceled by this office July 12, 1866, it having been shown that Mr. Stark relinquished the same for a valuable consideration.

These tracts are a part of an old section within the limits of the "Burlington and Missouri River R. R.," and were withdrawn by the Commissioner's letter of February 3d, 1866.

Upon the cancellation of said homestead entry No. 288, the tracts embraced therein reverted to the railroad company, and therefore the application of Mr. Stark to pre-empt the same must be denied, and you will advise him to that effect.

Very respectfully,

JOS. S. WILSON,
*Commissioner.*

LINCOLN, *Aug.* 25, 1870.

To the Hon. the Commissioner of the U. S. Land Office, Washington, D. C.:

Application of Charles E. Van Pelt to pre-empt the NE. ¼ NE. ¼
108 of sec. 24, town. 10, range 6, & N. ½ of NW. ¼ & NW. ¼ of NE. ¼ of sec. 19, town. 10, range 7 east, Lancaster County, Nebraska, 160 acres.

Your honor, please: The application was made by the said Charles E Van Pelt to pre-empt the above described tract of land on the 23rd of August, 1870, at the Lincoln land office, & was refused because the receiver, Mr. W. Chapin, decided it reverted to the Burlington & Missouri River Railroad Company as soon as it was ca'celled.

This land was taken as a homestead by Francis G. Stark June 13, 1864. No. of homestead was 288. The records of the Lincoln land office show this, & they also show that said homestead No. 288 was cancelled by your honor July 12, 1866, & that this man Charles E. Van Pelt made application to pre-empt the same the 23d day of August, 1870.

Does the law carry out the said land officers in refusing the application of this Charles E. Van Pelt to pre-empt this land? Certainly not.

Your honor knows that these officers are governed by your de-
109 cisions, & I know what your rulings are in such cases. I have sent several cases to you of similar nature, & you have not heeded my arguments, but I send this case to your honor not to tire your patience, but to convince you of your error, & to get the cases before the Secretary of the Interior.

Your honor knows that the only grounds that the said roade company claim on this land is that the grant was made to them by Congress, July 2nd, 1864. Now, your honor knows that that act or grant excepted homestead claims. This land was homesteaded by Francis G. Stark at that time, & for more than one year after they, the B. & M. R. Railroad Company, accepted their grant & filed their plat of lands & established their line of road & nearly six months after the Secretary withdrew all their

ands from market. Congress could not make a grant of this land as long as the prior grant remained in this land, & the said company accepted their grant of lands without this land, and it is not in their plats to this day, but remains as government on the land
110 records. I site your honor to your decisions in the case of the Michigan swamp land cases, rendered by you January 30th, 1868, & also in the case of Michael Coyne vs. William L. Richards, B. Ryland Wallace, & the Western Pacific Railroad Company, rendered May 20th, 1869. The points in these cases are similar to the point in this case, & the cases I have been sending you. But your honor ruled in the Boyd case that the grant meant valid claims, valid homestead, & where does a homestead become invalid? Not until declared so by your honor, which in this case was not until the 12th of July, 1866. Then I say it was invalid & reverted back to the government, & not to the railroad company as you have ruled. Is there anything in the act that warrants your ruling? No; nothing in language; and is the language of the same doubtful? No; but if there is, how are you to construe it? In favor of the government & against the railroad? On this point I cite your honor to a decision in the Supreme Court, which was & is as follows, & if the
111 court, your honor, had any doubts, from any obscurity of the act of Congress, that tribunal held in 23d Howard, 88, a settled rule of construction would determine the controversy, all grants of this description are strictly construed against the grantees; nothing passes but what is conveyed in clear and explicit language; when, as I said before, is the language in this act that is inexplicit, or when & in what language does it make any provisions that such lands shall fall to the railroad company?

I will close, trusting your honor will grant this application and permit this man to pre-empt this land.

Yours, in haste,

S. M. BOYD.

LINCOLN, NEBRASKA.

112 *Declaratory statement.*

I, Charles E. Van Pelt, of the county of Lancaster and State of Nebraska, being over the age of 21 years, and a married man, and a citizen of the United States, did, on the 23rd day of August, A. D. 1870, settle and improve the NE. ¼ of NE. ¼ of 24, town. 10, R. 6, & N. ½ of NW. ¼ & NW. ¼ of NE. ¼ *quarter* of section number 19, township number 10 north, of range number 7 of 6th principal meridian, in the district of lands subject to sale at the land office at Lincoln, in the State of Nebraska, and containing 160 acres, which land has been offered at public sale and thus rendered subject to private entry, and I do hereby declare my intention to claim the said tract of land as a pre-emption right under the provisions of the act of 4th September, A. D. 1841.

Given under my hand this 23 day of August, A. D. 1870.

CHARLES E. VAN PELT.

In presence of—
S. M. BOYD.

113 (Endorsed:)

This application to file refus*al* because said land when cancelled reverted to the Burlington & Missouri River Railroad Company.

W. F. CHAPIN, *Receiver.*

Register M. G. McConiga absent.

Cancelled. (See Commissioner's letter of July 12th, 1866.) Homestead No. 288.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
*Washington, D. C., Feb. 6th,* 1872.

REGISTER & RECEIVER, *Lincoln, Nebraska:*

GENTLEMEN: I am in receipt of your letter of Dec. 23rd last, enclosing application of Chas. Van Pelt to commute his homestead entry, 7799, which you rejected for conflict with declaratory statement No. 7830.

In reply have to inform you that your action was erroneous,
144 as will be seen upon reference to the second section of circular of Dec. 30th, 1870, herewith enclosed, and you will therefore allow Mr. Van Pelt to commute his homestead in accordance with instructions contained in circular referred to.

Very respectfully, &c.,

WILLIS DRUMMOND,
*Commissioner.*

RECEIVER'S OFFICE,
*Lincoln, Neb., June 22nd,* 1871.

I transmit herewith the application and pre-emption proof of F. G. Stark to enter the NW. ¼, NE. ¼ & N. ½ NW. ¼, S. 19, T. 10 N., R. 7 E.

On the 20th of June, 1870, F. G. Stark offered his declaratory statement for the said tract, which was refused by Mr. McConiga, the then register, and referred to the Commissioner, who also refused his d. s. for the reason that the land was withdrawn for the B. & M. R. R. Co. The said class of lands were practically restored to market on the 10th of May,
1871, by the decission of the Sec't. of the Interior, in the case of S. M.
115 Boyd v. the B. & M. R. R. Co.; on that day C. E. Van Pelt made a homestead entry upon said tract; and twelve days thereafter, and within thirty days after the land was restored to market, Starks again offered his d. s., dating his settlement at the time his former application was wrongfully rejected, which was received by the register, who subsequently concluded that he had erred in admitting the said d. s. upon the homestead of Van Pelt, sustaining the motion of Van Pelt to dismiss the proceedings instituted by Starks. Van Pelt's entry was unquestionably subject to the pre-emption claim of Starks if filed within thirty days after the land was restored to market, and he having filed his d. s. within that time, and proved by witnesses of the highest respectability his residence upon and cultivation of the said land during the entire year, the pre-emption claim of Starks' is perfect. Van Pelt made his homestead entry with full knowledge of Stark's prior settlement upon the land; the only question is as to whether Van Pelt was entitled to notice.

116 The fact that Van Pelt declined to go into trial, resting his case

upon a technicality of law, if it amounts to that, I construe into an admission of his inability to controvert in court the residence, cultivation, or personal qualifications of Starks.

I am of the opinion that Starks should be permitted to enter the land without further notice to Van Pelt.

W. F. CHAPIN, *Receiver.*

*Take notice.*

U. S. LAND OFFICE, LINCOLN, NEBRASKA.

Francis G. Stark having on this 10 day of June, A. D. 1871, made application to enter the NW. ¼, NE. ¼, & N. ½ NW. ¼ of section No. 19, in township No. 10 N. *north*, of range 7 E., under the provisions of the pre-emption a't of 1841, and finding upon the records of this office that C. E. Van Pelt has also filed a homestead claim on the same tract, I do hereby notify the said parties that I have appointed the 13, day of June,
117 1871, at 2 o'clock p. m., as a day of hearing in the *in the* premises.

On that day all parties in interest will appear at this office and show cause why the said Francis G. Starks should not be allowed to perfect an entry of said land.

H. W. SOMMERLAD, *Register.*

(Endorsed:)

I do solemnly swear that I served the within notice by delivering a copy of the same to the within-named C. E. Van Pelt personally, and reading the same to him, on the 10th day of June, A. D. 1871.

R. F. MOORE.

Subscribed & sworn to before me this 13th day of June.

W. F. CHAPIN,
*Receiver.*

LAND OFFICE AT LINCOLN,
*June* 13, 1871.

I, F. G. Starks, of Lancaster County, and State of Nebraska, do hereby apply to purchase the NW. ¼ of the NE. ¼ and N. ½ of the NW. ¼ of section 19, in township No. 10, of range 7 E., containing $118\frac{78}{100}$ acres, according to the returns of the surveyor-general, for which I had
118 agreed with the register to give at the rate of $2.50 per acre.

his
F. G. + STARKS.
mark.

In witness:

A. L. PALMER.

I, , register of the land office at , do hereby certify that the lot above described contains as mentioned above, and that the price agreed upon is per acre.

*Register.*

We, William McClintic & George A. Newman, do solemnly swear that we are acquainted with F. G. Starks, and that he is a resident of Lancaster County, Neb., and is the head of a family and a citizen of the United States, and is an inhabitant of the NW. ¼ of NE. ¼ & N. ½ of NW. quarter of section No. 19, of township No. 10 north, of range No. 7 E.; and that no other person resided upon the said land entitled to the right of

pre-emption; that the said F. G. Starks entered upon and made a settlement in person on the said land since the 20' day of June, 1870, and offered to file his pre-emption papers but was refused; and that
119 on the 22d day of April he was still settled on said land, and on the 22d day of May, 1871, was allowed to file his pre-emption papers, and has built a house & barn & improved said land, and has lived in the said house and made it his exclusive home from the 20th day of June, 1870, till the present time; that he did not remove from his own land within the State of Nebraska to make the settlement above referred to, and that he has since said settlement plowed and cultivated about twenty-eight acres of said land, and that the said F. G. Starks and his family have lived on said land and made it their home since the said 20th day of June, 1870.

WILLIAM McCLINTICK.
GEO. A. NEUMAN.

Subscribed & sworn to *before* said William McClintick and George Neuman, before me this 13th day of June, 1871.

I, H. W. Sommerlad, do hereby certify that the above affidavit was taken and subscribed before me this 13' day of June, A. D. 1871.

H. W. SOMMERLAD,
*Register.*

120 We certify that William McClintick & G. A. Neuman, whose name' are subscribed to the foregoing affidavit, are person' of respectability.

H. W. SOMMERLAD,
*Register.*
W. F. CHAPIN,
*Receiver.*

(Endorsed:)

I, F. G. Starks, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to approp'iate the proceeds of the public lands and to grant pre-emption rights," approved September 4, 1841, to the NW. ¼ of NE. ¼ & N. ½ of NW. ¼ *quarter* of section number 19, of township number 10 (ten) north, of range number 7 E., subject to sale at the land office at Lincoln, Nebraska, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of any land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation but in good
121 faith to appropriate it to my exclusive use or benefit, and that I have not, directly or indirectly, made any agreement or contract in any way or manner with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States would inure, in whole or in part, to the benefit of any person except myself.

F. G. + STARKS.
his
mark.

Witness:
A. L. POL.
L. L. CARMON.

I, W. F. Chapin, receiver of the land office at Lincoln, Nebraska, do hereby certify that the above affidavit was taken and subscribed before me this 13th day of June, A. D. 1871.

W. F. CHAPIN,
*Receiver.*

hereby refuse to swear the witness in this case the ground that I have decided to dismiss the case.

H. SOMMERLAD,
*Register.*

122 U. S. LAND OFFICE, LINCOLN, NEBRASKA.

In the case of G. F. Stark, claimant, to the NW. ¼ of NE. ¼ & N. ½ NW. ¼, sec. 19, town. 10, R. 7 east, Nebraska, & C. E. Van Pelt, contestant.

And now comes the said C. E. Van Pelt, by his att'ys, Boyd, Burr & Dilsworth, & moves the officers of this office to dismiss this case for the following reason, to wit: That the said C. E. Van Pelt, as the records show, homesteaded the above-described land on the 10th day of May, A. D. 1871; and that the said F. G. Stark did not pre-empt the same until the 22nd day of May, A. D. 1871, and for a further reason that the said pre-emption was illegally granted, and that the said officers have no authority to grant a pre-emption over a homestead until the said homestead is cancelled by the Commissioner of the General Land Office, and will ever pray.

C. E. VAN PELT,
By his att'ys, BOYD, BURR & DILSWORTH.

123 (Over.) This motion is sustained, and case dismissed this 13th day of June, 1871.

H. W. SOMMERLAD,
*Register of Land Office.*

The attorney for F. G. Starks excepts:
I am of the opinion that the case should not be dismissed; that Stark was entitled to filing on the land, and should be allowed to make his proof on the notice given.

W. F. CHAPIN,
*Receiver.*

(Endorsed:) F. G. Stark vs. C. E. Van Pelt. Motive to dismiss.

$ .] LAND OFFICE, AT LINCOLN, NEBRASKA,
*May 22nd*, 1871.

Mr. F. G. Stark has this day paid two dollars, the register's and receiver's fees, to file a declaratory statement, the receipt whereof is hereby acknowledged.

124 W. F. CHAPIN,
*Receiver.*

No. $\frac{7830}{7829}$.] Mr. F. G. Stark, having paid the fees, has this day filed in

this office his declaratory statement No. $\frac{7830}{7829}$ for NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ & N. $\frac{1}{2}$ NW. $\frac{1}{4}$ section 19, township 10 N., of range 7 E., containing $118\frac{78}{100}$ acres settled upon June 20, 1870, being offered.

H. W. SOMMERLAD,
*Register.*

We, Frederick A. Hovey and George McClintick, do solemnly swear that we are acquainted with F. G. Starks, and have been for the last three years; that he is a resident of Lancaster County, Nebraska, and that he is a citizen of the United States & the head of a family, and is an inhabitant of the NW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ & the N. $\frac{1}{2}$ of the NW. quarter of section No. 19, of township No. 10 north, of range No. 7 E.; and that no other person resided upon the said land entitled to the right of pre-emption; that the said F. G. Starks entered upon and made a settlement in per-
125 son on the said land since the 20th day of June, 1870, to wit, on the 20th day of June, 1870, and offered to file his pre-emption papers and paid the fee for the same, and the matter was referred to the Department of the Interior, that said F. G. Starks has built a house on said land and has lived in the said house and made it his exclusive home from the 20th day of June, 1870, till the present time; that he did not remove from his own land within the State of Nebraska to make the settlement above referred to, and that he has since said settlement ploughed & cultivated about twenty-eight acres of said land, and that he has planted trees on the same and shrubbery.

F. A. HOVEY.
GEO. McCLINTIC.

I, W. F. Chapin, do hereby certify that the above affidavit was taken and subscribed before me this 14th day of June, A. D. 1871.

W. F. CHAPIN,
*Receiver.*

We certify Fred. Hovey & George McClintic, whose names are subscribed to the foregoing affidavit, are persons of respectability, and
126 are entitled to credit.

H. W. SOMMERLAD,
*Register.*
W. F. CHAPIN,
*Receiver.*

REGISTER'S OFFICE,
*Lincoln, Neb., July 8th,* 1871.

To the Com'issioners of the General Land Office, Washington, D. C.:

SIR: In the case of F. G. Stark against C. E. Van Pelt, which is inclosed herein, I beg leave to offer the following decision and opinion:

It was commenced in this office by the said F. G. Stark serving notice on said C. E. Van Pelt to appear here and show cause why the said Stark should not be permitted to enter up his land described in this case. On the day of trial, June 13th, 1871, the parties appeared, and before any testimony was taken the said C. E. Van Pelt, by his att'y, Messrs. Boyd,
127 Burr and Dillworth, offered and *agreed* a motion to dismiss the

case (which is hereby attached and submitted to you) on the grounds that the said F. G. Stark was not entitled to enter up because the record showed that the said C. E. Van Pelt had homesteaded said land on the 10th day of May, 1871, and he, the said F. G. Stark, did not pre-empt the same until the 22nd day of May, 1871, and that, therefore, the said pre-emption of said F. G. Stark was illegal for that he could not pre-empt the same until he had cancelled the homestead of said C. E. Van Pelt. I sustained the motion and dismissed the case and advised the said Stark to file a complaint against said Van Pelt's homestead to have it cancelled, and then he could pre-empt said land. I refused to take any testimony in the case; the testimony which is enclosed is ex parte, and was taken by the receiver after the case was dismissed by me, and without giving the said C. E. Van Pet the right to cross-examine said Stark's witnesses or to introduce his witnesses. The facts in this case shows that the land is on an odd-
128 numbered section, and as soon as the land was thrown into market by the decision of the Secretary of Interior in the S. M. Boyd case vs. The B. & M. R. Road Comp., the said C. E. Van Pelt, being the first qualified applicant for said land, was permitted to homestead the same on the 10th day of May, 1871; afterwards, on the 22' day of May, 1871, said Stark appeared at the office and pre-empted the same, which should not have been allowed, and would not had I been conversant with the land; just assuming the duties of register of this office the business, rules, and proceedings of the office were new to me. In this matter I am controlled by your instructions that where there is a homestead entry on any land, *and* a person desirous of homesteading or pre-empting the same must file a complaint against said homestead and have it cancelled before he should be allowed either to homestead or pre-empt, therefore I am of the opinion that said Stark should not be permitted to enter up said land until he has said Van Pelt's homestead cancelled, and I cannot sanction the proceed-
129 ings of the receiver in taking the testimony and proof of said Stark in this case at this time, when the only question before you should be the appeal on the motion submitting the cause to you.

I remain, yours, respectfully,

H. W. SOMMERLAD,
*Register.*

(Soldiers and sailors' homestead on railroad lands, act of July 15, 1870.)

*Affidavit.*

LAND OFFICE AT LINCOLN, NEB.,
*May 10th*, 1871.

I, C. E. Van Pelt, of Lancaster County, Neb., having filed my application No. 7799 for an entry under the provisions of the act of Congress, approved May 20, 1862, and desiring to avail myself of the 25th section of the act of July 15, 1870, in regard to land held at the double minimum price of $2.50 per acre, do solemnly swear that I am the identical C. E. Van Pelt, who was a private in the company commanded by Captain Cowgill in the 60th Regiment of Ohio Infantry Vol., commanded
130 by Col. W. H. Trimble, in the war of 1861; that I continued in

actual service for ninety days and have remained loyal to the government; that said application, No. 7798, is made for my exclusive benefit and for the purpose of actual settlement and cultivation, and not directly or indirectly for the use or benefit of any other person or persons; and that I have not heretofore had the benefit of the homestead law.

Sworn to and subscribed this 10th day of May, 1871, before

C. E. VAN PELT.

Signed in presence of—

H. W. SOMMERLAD,
*Reg'ster.*

NOTE.—In the privilege granted by act of July 15th, 1870, to those who have been engaged in the military or naval service, it must be remembered that five years' actual residence upon and cultivation of the land as a homestead are necessary in order to secure title from the Government, unless the actual settler shall elect to commute under the 8th section of the homestead act of July 20th, 1862. (U. S. Statutes, vol. 12, p. 393.)

131 *Duplicate receiver's receipt No.* 7799. *Application No.* 7799.—*Homestead.*

RECEIVER'S OFFICE, LINCOLN,
*May 10th*, 1871.

Received of C. E. Van Pelt the sum of eighteen dollars cents, being the amount of fee and compensation of register and receiver for the entry of N. ½ of NW. ¼ & NW. ¼ of NE. ¼ of section 19, in township 10, of range 7 east, under the act of Congress approved May 20, 1862, entitled an "Anct to secure homesteads to actual settlers on the public domain."

W. F. CHAPIN,
*Receiver.*

NOTE.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry; an abandonment of the land for more than six months works a forfeiture of the claim; further, within two years from the expiration of the
132 said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled; if the settler does not wish to remain five years on his tract he can at any time after six months pay for it with cash or land warrants upon making proof of settlement and cultivation from date of filing affidavit to the time of payment.

*Receiver's receipt No.* 7799. *Application No.* 7799.—*Homestead.*

RECEIVER'S OFFICE, LINCOLN, NEB.,
*May 10th*, 1871.

Received of C. E. Van Pelt the sum of eighteen dollars, being the amount of fees and compensation of register and receiver, for the entry

of N. ½ NW. ¼ and NW. ¼ NE. of sec. 19, in township 10 N., of range 7 east, under the act of Congress approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain."
$16.00.] W. F. CHAPIN,
*Receiver.*

133 *Application No.* 7799.

LAND OFFICE AT LINCOLN, NEB.,
*May 10th*, 1871.

I, C. E. Van Pelt, of Lancaster County, Neb., do hereby apply to enter, under the provisions of the act of Congress, approved May 20, 1862 & July 15th, 1870, an act to secure homesteads to actual settlers on the public domain, the N. ½ of NW. ¼ & NW. ¼ of NE. ¼ of section 19, in township 10, of range 7 east, containing 120 acres.
(Across the face:) Com. to cash, 2525, Feb. 15, 1872.
C. E. VAN PELT.

LAND OFFICE AT LINCOLN, NEB.,
*May 10th*, 1871.

I, H. W. Sommerlad, register of the land office, do hereby certify that the above application is for surveyed lands of the class which the applicant is legally entitled to enter under the homestead act of May 20, 1862, and that there is no prior, valid, adverse right to the same.
H. W. SOMMERLAD, *Register.*

134 No. 2525.] RECEIVER'S OFFICE AT LINCOLN, NEBRASKA,
*February 16th*, 1872.

Received from Charles E. Van Pelt, of Lancaster County, Nebraska, the sum of two hundred and ninety-six dollars and 95 cents, being in full for the south half of the northwest quarter, and the northwest quarter of the northeast quarter of section No. nineteen, in township No. ten north, of range No. seven east, containing 118 acres and 78 hundre'ths, at $2.50 per acre.
$298.95.] W. F. CHAPIN, *Receiver.*
(Across the face:) Duplicate.

No. 2525.] RECEIVER'S OFFICE AT LINCOLN, NEBRASKA,
*Feb'y 15th*, 1872.

Received from Charles E. Van Pelt, of Lancaster County, Nebraska, the sum of two hundred ninety-six dollars and 95 cents, being in full for the north half of northwest ¼ and northwest of northeast quarter of section No. nineteen, in township No. ten N., of range No. seven east, containing 118 $\frac{78}{100}$ acres, *and hundredths* at $2.50 per acre.
$296.95.] W. F. CHAPIN, *Receiver.*

135 No. 2525.] LAND OFFICE AT LINCOLN, NEBRASKA,
*February 15th*, 1872.

It is hereby certified that, in pursuance of law, Charles E. Van Pelt, Lancaster County, State of Nebraska, on this day purchased of the register of this office the lot or north half of northwest quarter and northwest ¼

of northeast ¼ of section No. nineteen, in township No. ten N., of range No. seven east, containing 118 $\frac{78}{100}$ acres, at the rate of 2 dollars and 50 cents per acre; amounting to two hundred ninety-six dollars and 95 cents, for which the said Charles E. Van Pelt has made payment in full as required by law. Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office, the said Charles E. Van Pelt shall be entitled to receive a patent for the lot above described.

H. W. SOMMERLAD, *Register*.

(Endorsed:) No. 2525. Cash entry. Land office at Lincoln, Nebraska. Sec. 19, town. 10 N., range 7 E. February 15th, 1872. Approved by G., June 9, 1874. Hom. pat., June 15, 1874. Rec. v. 4, p. 480.
136 C. Homestead act of May 20, 1862, 8th section.

I, Charles E. Van Pelt, claiming the right to commute under the 8th section of the act of May 20, 1862, my homestead entry No. 7799, made upon the N. ½ of the NW. ¼ and the NW. ¼ of the [illegible]. ¼ section 19, township 10, range 7 east, do solemnly swear that I made settlement upon said land on the 15th day of June, 1870, and that since said date, to wit, on the 10th day of October, 1870, I have built a house on said land, and have continued to reside therein up to the present time, and that I have broken and cultivated fifteen (15) acres of said land. I further swear that I have not heretofore had the benefit of the homestead act, nor abandoned an entry previously made under its provisions.

CHAS. E. VAN PELT.

LAND OFFICE, LINCOLN, NEB.
Sworn and subscribed to before me this 15th day of February, 1872.
H. W. SOMMERLAD,
*Register*.

We, David Butler, Otto Funke, and C. H. Devine, do solemnly
137 swear that we have known said Charles E. Van Pelt for the period of two years last past, and we know that he is the head of a family, and that he is a citizen of the United States, and is an inhabitant of the N. ½ of the NW. ¼ and the NW. ¼ of the NE. ¼ section 19, township 10, range 7 east; that the said Charles E. Van Pelt entered upon and made settlement in person on the said land on the 15th day of June, 1870.

That he has built a house on *on* said land and has lived in said house and made it his home from the 10th day of October, 1870, until the present time, and that he has since said settlement made the following improvements on said land, to wit, built a one-story frame house, sixteen feet by thirty feet, and painted and plastered the same; built a stable and other outbuildings, & dug a well, and has plowed and cultivated about fifteen (15) acres, and has set out about fifty trees.

DAVID BUTLER.
OTTO FUNKE.
CHAS. H. DEVINE.

LAND OFFICE, LINCOLN, NEB.

138 Sworn and subscribed to before me this 13th day of February, 1872.

H. W. SOMMERLAD,
*Register.*

(Endorsed:) Homestead, 8th section. Land office at Lincoln, Nebraska. Proof of settlement. Chas. E. Van Pelt. Homestead No. 7799. Feb'y 15, 1874. Sec. 19, town. 10, R. 7 E. Cash No. 2525.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*Washington, D. C., May* 28, 1872.

REGISTER & RECEIVER, *Lincoln, Neb.:*

GENTLEMEN: This office has considered the contested case of Francis G. Stark, pre-emption claimant, vs. C. E. Van Pelt, homestead applicant, involving the right to the N. ½ of NW. ¼ and NW. ¼ of NE. ¼ sec. 19, 10 N., 7 E., offered double minimum land.

139 Among the papers are found numerous ex parte affidavits and voluminous arguments by counsel, but not the proceedings of any regular trial. It appears that a hearing was ordered and when the time came for holding the same it was dismissed by the register, whereupon the receiver accepted affidavits in favor of Stark and sent them up with his opinion. In view of the facts in this case you are directed to order an investigation after due notice to all parties in interest.

At the trial see that both sides have full and equal right accorded them to cross-examine witnesses and bring out all material points, especially the date of settlement on which either party based his present claim, with the date when any application may have been made and refused to file for or enter the tracts in dispute.

Send up the proceedings when had with your joint opinion endorsed thereon referring to this as G. by date.

Very respectfully,

WILLIS DRUMMOND,
*Commissioner.*

FRANCIS G. STARK, PRE-EMPTION CLAIMANT,
*vs.*
C. E. VAN PELT.

140 U. S. LAND OFFICE, LINCOLN, NEBRASKA,
*July 10th*, 1872.

Applicant homesteaded N. ½ NW. ¼ & NW. ¼ NE. ¼ sec. 19, 10, 7 east. In the matter of investigation ordered in this case by Commissioner's letter May 28th, 1872, the 9th day of July, 1872, said parties appeared and by agreement continued the case until July 10th, at 9 o'clock a. m.

*Testimony on part of the pre-emption claimant, F. G. Stark.*

GEORGE A. NUMAN, being sworn, testified as follows, to wit:

Ques. State if you are acquainted with the land in controversy and Mr. Stark, pre-emption claimant thereof.

Ans. I have been acquainted with Mr. Stark for about 17 years, and I have known the land about 8 years.

Ques. You may state Mr. Stark's age as near as you can, and whether or not he is the head of a family.

Ans. I think him to be over sixty years of age, and he is the head of a family consisting of a wife and two daughters that are married.

141 Qu's. State what you know of his pecuniary circumstances.

Ans. He has not anything that I know, except the interest he has in the land in controversy.

Ques. You may state what his physical condition is.

Ans. He is not able to do scarcely any work.

Qu's. State whether he is or is not a citizen of the United States.

Ans. He is a citizen of the United States.

Qu's. You may state where he resides, and, if upon the land in controversy, how long he has resided there.

Ans. He resides upon the land in controversy; he has resided there in all about six years, and for the last four years all of the time.

Ques. You may state what improvements he has upon the land in controversy.

Ans. He has a house, in which he lives, and he has a lot of trees set out; I don't know how many; I suppose two or three hundred, and he has a lot of breaking done. He told me there was twenty-eight

142 acres, and I suppose there is about that much. Mr. Stark is cultivating a part of this land the present year.

Ques. You may state, if you know, when Mr. Stark first decided to claim this land under the pre-emption law, and what steps he took to secure a filing there on said land.

Ans. It was a little over two years ago. Two years this June he applied for a filing at the U. S. land office in Lincoln, Nebraska, in the stone building where the land office is held.

Cross-examined:

I am a son-in-law to the claimant Stark.

Ques. Under what title or claim did Mr. Stark 1st settle upon the land?

(Objected to as immaterial.)

Ans. As a homestead.

Ques. What became of his homestead?

Ans. I don't know.

Ques. How long did he live there at the first time?

Ans. I think he was there about two years; he went from there to Rock Bluffs, in Cass Co., Neb., and remained there during the winter.

Ques. State the month and the year that he returned to this land.

143 Ans. It must have been in the spring some four years ago—the spring of 1868, I believe. I remember of helping him fix his dug-out, and it was snowing and raining at the time.

Ques. Under what claim and title did he return to this land and settle upon the same?

Ans. Under his original homestead, I believe.

Ques. State when this breaking was done, and who it was done by.

Ans. It was two or three years ago. I can't tell who it was done by. I saw the man breaking, and I heard his name, but don't recollect it.

Ques. How much breaking did you see done there?

Ans. I did not see very much. I was only there one day.

Ques. How many trees did you see Mr. Stark set out there?

Ans. I don't know how many I saw him put out; not very many; he did not work much while I was there, but I saw him set out some trees. I saw him tending them, and 'new they was on the ground that he tended.

Ques. When did Mr. Stark build his house upon this land?

144 Ans. He built a house, and it blowed down; then he put it up again, and made it larger. I think that it was two or three years ago.

Ques. How much breaking was done upon this land before the breaking that was done two years ago, and how many acres are there now broke upon the land all together?

Ans. I suppose there were about three acres done before, and I suppose that there is about 28 acres in all, besides what is in the west forty, and where Van Pelt's house is on, what I suppose is Van Pelt's house.

Ques. Did not one Roberts during this time claim this land from the railroad company, and is he not the person that had all the land broken which you have testified about, except about three acres?

Ans. I don't know anything about it, except what Mr. Starks told me.

Ques. In what year did Mr. Stark have the three acres broken, to which you have testified?

Ans. Part of it was about two years ago, and a part of it about

145 three years ago.

Ques. Is it not the fact that one Mr. Porter took possession of this land? and, if so, state when he did so.

(Objected to as irrelevant, and not cross-examination.)

Ans. I don't know that Mr. Porter ever lived on it. I don't know Mr. Porter.

Ques. Where do you reside, and how far from this land in controversy?

Ans. In Saunders County, 28 miles from the land, and I have lived there for the last five years.

Ques. Where was Mr. Stark born?

Ans. He tells me in Vermont.

Redirect:

Ques. How much other land has Mr. Stark besides the land in controversy?

Ans. Not any.

Ques. You may state where he removed from and whether he owned the land that he removed from.

Ans. He was a livery-stable man in Omaha, at work for Heman the summer before he came here. He did not own any land that I know of.

GEO. A. NEWMAN.

146 Subscribed and sworn to before me this 10' day of July, 1872.

SYDNEY REESE, being sworn, testified as follows, to wit:

I am acquainted with the land in controversy and Mr. Stark the pre-emption claimant thereof. I have know' Mr. Stark about 18 years. I live on the same place Mr. Stark does, and have lived there about four years. I am a son-in-law of his.

Ques. State as near as you can the age of Mr. Stark; whether he is the head of a family, and if the head of a family, what that family consists of.

Ans. I don't know his age exactly, but 56 or 57 I think, and I know he is the head of a family consisting of his wife.

Ques. You may state what count'y he is a citizen of.

Ans. United States. He came from York State.

Ques. You may state where Mr. Stark resides, and if upon this land in controversy, how long he has resided there.

147 Ans. He resides upon the land in controversy; has resided there about five years.

Ques. Describe his improvements upon this land.

Ans. He has a house on it, I think 12x14 feet; he has breaking done on it, about 28 acres; he has trees and schrubs set out; he has corn now on the land, and potatoes and garden stuff; no well.

Ques. Has he had this land in crops before this year, and if so, for how many years, and how many acres has he had in crops during the time?

Ans. He had in twenty-five acres last year, wheat & oats; he cultivated three acres the year before that, that was into potatoes and corn and garden stuff; the year before that he had in about one acre and a half in corn, potatoes, and garden stuff.

Ques. You may state, if you know, when Mr. Stark decided to claim this land under the pre-emption law.

(Objected to on the ground that the question is improper, and the witness should state what was done.)

Ans. I do not know.

148 Ques. You may state how much land Mr. Stark owns or did own June 20th, 1870, beside the land in controversy.

Ans. Not any.

Ques. Where was he living June 20th, 1870, and where has he resided from that time to the present time, and where does he now reside?

Ans. He resided upon this same land in controversy, and he resides there now, and he has resided there during this whole time.

Ques. You may state where he removed from upon the land in controversy, and who was the owner of the land he removed from.

Ans. He removed from Rock Bluff, Nebraska, and Carl Patterson was the owner of the land he removed from.

Ques. You may state if you know the physical condition of Mr. Stark.

Ans. Yes, sir; one of his hands have been broke. and he has been ruptured.

Ques. What is his financial condition?

Ans. He has no property except this land.

149 Ques. Do you know how Mr. Stark has supported himself and wife while he has been living upon this land?

Ans. He has done it by gardening a little. He carried his garden stuff to town on his back, and he has received a portion of the crops raised on the land.

Cross-examined:

Ques. What year did Mr. Stark 1st move upon this land in controversy?

Ans. He has been there about five years.

Ques. What did he do the 1st year upon the land by way of improvement?

Ans. I was not there the first year.

Ques. What was the condition of the property the 1st year you knew it, and when did you 1st become acquainted with it?

Ans. I was acquainted with it a long time ago, and about four years ago there was a dug out on it, and a garden patch of perhaps three-quarters of an acre.

Ques. How long after that was it, and what were said improvements, and who placed them there?

Ans. They were made right away that summer; he built a part of the house he lives in now; it blowed down, and he used the same
150 lumber to build a part of the house he lives in now.

Ques. When did he make any other improvements upon said land, to your knowledge?

Ans. He made them the same summer; broke an acre and a half, or I did it for him; that was all he did that summer.

Ques. What improvements, if any, did he do the next summer, and how much?

Ans. He did more breaking; I broke an acre and a half more for him; he improved what he had broke, put it in cultivation.

Ques. What was done the next summer by him, by way of improvements?

Ans. He moved his house, made it larger, set out shrubs and trees.

Ques. What did he do the next summer following?

Ans. He has cultivated what land was broke; he has gardened, and a crop put on the land.

Ques. Has he done any more breaking on said premises other than what you have just mentioned?

Ans. He has not.

Ques. During any of the time you have been mentioning did Stark move away from said premises?

Ans. No, sir.

151 Adjourned until one o'c. p. m.

his
SIDNEY + RIESE.
mark.

Subscribed and sworn to before me this 10th day of July, 1872.

WILLIAM MCCLINTICK, being sworn, testified as follows, to wit:

I am acquainted with Mr. Stark, pre-emption cla'mant to the land; I am acquainted with the land in comtroversy.

Ques. Where was Mr. Stark living on the 20 day of June, 1870, and where has he lived from that time to the present, and where does he now reside?

Ans. He lived on this land in controversy; he has lived on the land all the time, and he is living there now.

Ques. What improvements has he upon the land?

Ans. He has some twenty acres of breaking, and perhaps more; he has a small board house which he resides in; he has a portion of the breaking in crops this year; there is a portion laying idle.

Ques. Has Mr. Stark any property?

152 Ans. All that I know of is in this house and this land.

Ques. How has he supported himself and family since Jan. 20th, 1870?

Ans. I think that he has worked what he could; gardened some and farmed a little; his physical strength is not such as to admit of his laboring much.

Ques. Do you know of Mr. Stark owning any real estate when he came onto this land in controversy?

Ans. I do not. Mr. Stark was living on this land seven years ago, when I first came into the county.

Cross-examined:

Ques. You may state how long you have known Mr. Stark.

Ans. I am only personally acquainted with him for a little over six years, but he was living on the land seven years ago this month, about the present time.

Ques. How do you know that he was living there seven years ago when you have only known him for six years?

Ans. I was at his house; he was living there on the land as a homestead; he left there during the winter of 1865, and he returned, if I mis-

153 take not, in the year 1867, in the spring at that time; I do not know that he had any title.

Ques. What title did he claim to have?

Ans. At that time, when he first came back, he had the impression, or others had told him, that he could hold the land under his old homestead right.

Ques. Did he not tell you that he was holding it under the homestead right?

Ans. I don't think he did; but there was a conversation on the pra'rie in which he said that if he could hold it that he would pay Mr. Porter back what he paid him.

Ques. What did he mean by saying if he could hold it?

Ans. He meant this same land that he had homesteaded.

Ques. When did Mr. Stark do this 20 acres of breaking?

Ans. There was some 20 acres of breaking done two years ago and there was some loose before that; he cultivated it; I know that the land

154 was broken; I don't know who paid for the breaking; I know that Mr. Stark rented me the land the next year; I don't recollect the man's name that drove the team that did the breaking.

Ques. Was it Mr. Starks that hired the man to do the breaking?

Ans. I don't know that Mr. Starks hired the man.

W. McCLINTIC.

Subscribed and sworn to before me this 10th day of July, 1872.

WM. MCCLINTIC, recalled, testified as follows:

Ques. Do you know when Mr. Stark decided to claim this land under the pre-emption law, and, if so, what steps he took to secure the same?

(Objected to on the ground that the question is improper and incompetant.)

Ans. Two years ago this last June I came as a witness to the land

office for him. Mr. Starks said that he was perfectly willing to pay for the land if he could get it by paying for it under the pre-emption act.

WM. McCLINTIC.

155 PHILETUS PECK, being sworn, testified as follows, to wit:

I am acquainted with Mr. Stark; the land in controversy; I have known Mr. Stark a little over four years; I have known the land a little over five years.

Ques. You may state if you know the age of Mr. Stark, and whether or not he is the head of a family, and if so, of what that family consists.

Ans. I should think that he is nearly seventy years of age; he is the head of a family; consists of a wife; he is a citizen of the United States.

Ques. You may state where Mr. Stark has resided since June 20th, 1870.

Ans. He has resided upon the land in controversy.

Ques. You may state what the physical condition of Mr. Stark is.

Ans. He is a feeble old man; he has a breach and one of his hands is mashed badly, and I should not think he was able to labor much.

Ques. You may state, if you know, what his pecuniary circumstances are.

Ans. He has not anything but this land.

156 Cross-examined:

Ques. Under what claim or title to this land did he move on the same?

Ans. I do not know when he went on the land; I know he was there; I don't know under what title he was claiming it.

Ques. From whom has he received support with which to live for the past two years?

Ans. I can't tell; he has gardened a little and he has worked for me a little.

PHILETUS PECK.

Subscribed and sworn to before me this 10 day of July, 1872.

M. M. CULVER, being sworn, testified as follows, to wit:

I am acquainted with Mr. Stark and the land in controversy.

Ques. Where was Mr. Stark residing on the 20th day of June, 1870, and where has he resided from that time to the present, and where does he now reside?

Ans. On this land in controversy.

Ques. You may state what is the physical condition of Mr. Stark.

Ans. He is pretty well advanced in years; I have heard him
157 complain about a breach, and I learned some time since that he had an accident affecting one of his hands.

Ques. Do you know whether Mr. Stark has done any manual labor on the land since June, 1870?

Ans. He has; more or less.

Ques. What are his pecuniary circumstances?

Ans. I think they are limited and confined to his interest in this land,

and his principal means of support have been from what he got from the place.

M. M. CULVER.

Subscribed and sworn to before me this 10th day of July, 1872.

FRANCIS G. STARK, being sworn, testified as follows:

You may state whether you have or have not or ever had the benefit of any pre-emption right, under the pre-emption act of Sept. 4th, 1841, or any other act of Congress; if you have, state where and when it was.

Ans. I never have; this is the 1st.

Ques. Did you ever file a declaratory statement for or settle upon any other tract of public land other than the land in controversy?

158 Ans. I never have.

Ques. You may state how much land do you own now or have you owned since June 20, 1870, other than this land in controversy.

Ans. Not any.

Ques. You may state for whose use and benefit you settled upon this land in controversy, and whether you settled upon it for the purpose of speculation.

Ans. I settled on it for my own use and my family, and not for the purpose of speculation.

Ques. You may state whether you have made any contract or agreement with any person or persons to part with the title to this land, or any portion of it; and, if so, state to whom.

Ans. I never have to any person living or breathing.

Ques. When, if at any time, did you first offer to file a declaratory statement upon this land?

Ans. Five years ago about this time.

Ques. Have you, if at any time, since then offer' to file a declaratory statement for this land?

Ans. Two years ago this June past I offered a declaratory statement for this land.

159 Cross-examination:

Ques. You say you had never made any agreement to part with a portion of this land, and did you not make a contract with one J. S. Porter to sell him your interest in this land at one time?

(Objected to, on the ground that it is indefinite as to time, and may be anterior to any pre-emption claim which Stark might have had upon the land and in that view not proper cross-examination, and the witness instructed by his counsel not to answer the question.)

(Witness remained mute.)

Ques. Do you refuse to answer the above question?

Ans. I shall obey the orders of my counsel.

Ques. Has your counsel instructed you what answer you shall make under oath, and do you swear according to his instructions?

Ans. No, sir; they have not. When they tell me to stop I obey their instructions; when they tell me to stop.

Ques. Do you still say that you never made any contract to part with a portion of this land?

160 (Objected to for the same reason given to the next preceding

question, and witness instructed not to answer the question for the same reason.

Objection withdrawn.)

Yes, sir.

Adjourned until 9 o'c. a. m.

JULY 11TH, 1872.

Ques. Have you made any statements to any person at any time that you had sold your interest to those premises, or any part thereof?

(Objected to for the reason that it does not state the time, person, or place with whom and where such conversation was held, and witness instructed not to answer.

Witness remains mute.)

Ques. Do you or do you not refuse to answer the above question?

Ans. Under instructions of counsel the witness refuses to answer.

Ques. Have you at any time stated to Mr. Hocker, or W. J. Harris, or Mr. M. M. Culver, or Mr. Tarbox, or M. A. Estabrok, or any of them, that you had sold these premises or interest therein, or contracted any portion thereof to Mr. W. F. Chapin?

161 *Ans.* (Objected to, for the reason that it does not call the attention of the witness to any time or place of any conversation with either of the persons named, and for the further reason that if any conversation was had upon this subject and the same were made anterior to June 20,1870, the same would be wholly immaterial and irrelevant; and for the reasons assigned the counsel for the claimant instructs him not to answer.)

(Witness remains mute.)

Ques. Do you refuse to answer the above question?

Ans. Yes.

his
FRANCIS + G. STARK.
mark.

Attest:

S. S. CARMON.

*Testimony for C. E. Van Pelt, homestead applicant.*

J. S. PORTER, being sworn, testified as follows, to wit:

Ques. Are you acquainted with the land in controversy and the parties in this case?

Ans. I am acquainted with the land in controversy; known it since Nove., 1865, and I have know' Mr. Stark since that time. I have

162 known Mr. Van Pelt some over a years.

Ques. State who was in possession of said land, if anybody, and what improvements were upon said land at that time.

(Objected to for the reason that the question is immaterial and wholly improper.)

Ans. Mr. Stark was living on the place at that time. There was two small sod house', and a little patch of breaking—perhaps an acre; that constitutes the improvements as far as I know anything about.

Ques. State if you know by what title the said Starks claimed the said premises at that time, and what became of said claim.

(Objected to for the reason that the same is immaterial and wholly irrelevant to the issue in this case.)

Ans. He held it under the homestead. He transferred that claim to me by signing his duplicate over to me, and I applied for the same piece of land in making the assignment. He assigned the duplicate to me instead of the government, which the officers said should have been
163 done; but they took the duplicate, and I filed my application for the land.

Ques. State whether or not the said Stark abandoned the possession of the said premises at that time; and, if so, who took possession of the same.

(Objected to for the reason before stated.)

Ans. He assigned the duplicate to me on the 28th day of Nov., 1865. Between that time and the 20' of April following he abandoned the place. About that time (20' of April, 1866) I took possession of the premises.

Ques. How long did you continue in possession of said premises, and *and* what improvement did you put on said premises?

(Objected to for the same reason as above stated.)

Ans. I stayed on until about the middle of May, 1866. I made some little improvements. I set up some , put a part of a roof over the same; a temporary concern, not amounting to much.

Ques. Under what title did you claim said premises while you were in possession, and what was your reason for leaving the same?

164 (Objected to for the same reason above stated.)

Ans. I claimed it under the title of an application for a homestead while I stayed on it. My reasons for leaving was that I became satisfied that I would have trouble with it—perhaps have a lawsuit with the railroad company—and I had not money to trouble with it, so I concluded to leave it and go and hunt another claim.

Ques. Did you keep possession of the claim until the railroad company claimed the land?

(Same objection as above.)

Ans. It was reported through the county that the lands were withdrawen, and the railroad company claimed the land between the date of my application and the abandonment of Stark.

Ques. At the time you left said premises was there any other person in possession *to* the same?

(Same objected as above.)

Ans. There was none; at least there was no person living on it.

Ques. Have you examined said premises within the past few
165 days; and, if so, state whether the place where Mr. Stark is now living is the same place where he was living at the time you made the purchase, and is the breaking that you referred to at the same place where the said Stark now lives?

Ans. I was around the place yesterday morning as regards the house he now lives in; I could not be certain whether it was on the same place that it was when I was there or not; my impression is that it is somewhere near the same place. I suppose the breaking is the same. I saw breaking there, and I supposed part of it to be the same.

Ques. Are you acquainted with the general reputation of Francis G. Stark in the neighborhood in which he lives for truth and veracity?

Ans. I have been acquainted with the old man for some length of time, and as regards his reputation, I think it is not very good.

Ques. From that reputation would you believe him under oath?

166 Ans. From his reputation and my own personal knowledge I could not.

Cross-examined:

Ques. How far do you reside from Mr. Stark?

Ans. At the present time eleven or twelve miles, but heretofore not so far; I have been where I am now living about two years, and previous to that I have lived about five miles from him.

Ques. How much of personal knowledge of Mr. Stark goes to make your opinion of Mr. Stark as to truth and veracity?

Ans. About of personal knowledge and report equal'y; but the greatest thing was the oath he took in the trial here yesterday; that would have convinced me if nothing else, knowing as I do the circumstances in the case heretofore.

Ques. Do you refer to the circumstances connected with his selling his claim to you in 1865 as going to form your opinion as to his character for truth and veracity, referred to by you in your previous answer?

Ans. In part I do, and his statement heretofore made in this

167 case, and other dealing between me and him.

J. L. PORTER.

Subscribed to and sworn to before me this 10th day of July, 1872.

W. J. HARRIS, being sworn, testified as follows, to wit:

I am acquainted with the land in controversy and the parties in this case. I have known the land some years.

Ques. State as near as you can when Mr. Stark moved upon this land.

Ans. He was living upon the land in 1865.

Ques. Under what title did he claim the same at that time?

Ans. He was claiming it under the homestead act.

Ques. How long did he remain there at that time?

Ans. Until some time in the spring of 1866.

Ques. When did he return to the land?

Ans. Either in the latter part of 1867 or the forepart of 1868.

Ques. Was you upon this land in the spring of 1868; if so, state what you were doing there?

Ans. I was. I was there at Francis Stark's place *place* as asses-

168 sor of Lancaster precinct, Lancaster Co.

Ques. Had he any property at that time to assess?

Ans. I think not.

Ques. State what improvements, if any, he had there then.

Ans. There was a small dugout on the place. I am not certain whether there was an' breaking on the place when I was there as assessor or not; if there was it would not exceed one acre.

Ques. Was you upon this land in the years 1868 and 1869, if so, you may state whether there was any other improvements upon the land than those you have already stated?

Ans. I was there nothing more than passing through it, as the road run through it. I don't think there were any other improvements than what I have stated.

Ques. Was you upon the land in 1870 as assessor; if so, state what property, if any, he reported to you to assess?

Ans. I was not as assessor in that year.

Ques. Was you there as assessor in the year 1871, and, if so, what property did he report to you to assess?

Ans. I was; he reported a yoke of cattle, and I think one cow.

169 I believe that was all of the personal property. The land, the N. ½ *W*W. ¼ & NW. ¼ NE. ¼, was in my list, abstract list, from the co. clerk, of taxable lands for Lancaster precinct, Lancaster Co., Neb.; they were assessed to F. G. Stark.

Ques. Did he at that time state to you that he had got a certificate to that land, and that it was subject to taxation, or words to that effect?

Ans. I do not know as he did.

Ques. Did he at any time tell you that he had made an entry of that land, and that he had got a good title to it?

Ans. He did not when I asked him about the land; when I was assessor I asked him if I must put the land to him, as I had it on my list of lands to tax; he said he guessed I had better put it to him.

Ques. Did he, in the year 1871, go to you to buy some hay; if so, what, if anything, did he say about pay for it?

(Objected to, for the reason that it is incompetent, irrelevant, and wholly immaterial to the issue in the cas'.)

Ans. He came to me in the year 1871, and wanted some hay,

170 and wanted me to wait for my pay until Mr. Chapin came back from Washington, I believe, where he had gone to, and he would get the money of Mr. Chapin and pay for the hay. I told him that I sold my hay for money.

Ques. What improvements has the claimant, C. E. Van Pelt, upon the land?

Ans. He has a house and some breaking; the house, I suppose, is about 16x22 feeet, worth about four hundred dollars. I can't state how many acres of breaking he has. I know he has some breaking. I can't say whether he has any out-buildings or a well.

Ques. About what is the value of the improvements that Mr. Stark has upon this land?

Ans. Somewhere between fifty and one hundred dollars.

Ques. What is the general reputation of Mr. Stark for truth and veracity in the neighborhood in which he resides?

Ans. Very poor.

Ques. Would you believe him under oath in a case in which he is an interested party?

Ans. I would be a little doubtful.

Ques. Is it not the fact that it is the general report in the neigh-

171 borhood in which Mr. Starks, this complainant, lives, that he is a great falsifier?

(Objected to, for the reason that the question is leading and improper, both as to form and of substance.)

Ans. It is.

Cross-examined:

Ques. Will you swear positively that in the year 1871 the clerk of Lancaster Co. entered upon his list of taxable lands, which he furnished you, the N. ½ NW. ¼ & NW. ¼ of NE. ¼, sec. 19, T. 10, 7 E., and for you to assess?

Ans. I will.

Redirect:

Ques. Do you or do you not mean that this land was placed upon the books or list of land which was given you in that year to assess?

Ans. I do.

W. G. HARRIS.

Subscribed and sworn to before me this 11th day of July, 1872.

ARTEMUS ROBERTS, being sworn, testified as follows, to wit:

I am acquainted with this land in controversy; I am also acquainted with Mr. Van Pelt and Mr. Stark.

172 Ques. Did you at any time have a claim upon said land; if so, what was said claim; when was it?

Ans. I bought the land of the railroad company in May, 1870.

Ques. What condition was said land in at the time you purchased the same by way of improvements?

Ans. There was a little shanty on it, and a few acres broke—two or three in cultivation.

Ques. Did you place any improvements upon said land, or do any breaking under your title, and, if so, what, and how much, and when was it done?

Ans. I broke 25 acres June following the date of my purchase; the breaking was done on the south part of the NE. ¼ of the NW. ¼. Mr. Stark's improvements are on the NE. part of the same forty.

Ques. About how far was this breaking done from Mr. Stark's shanty?

Ans. About ten or twenty rods?

Ques. About how long did you retain possession of said land after the breaking was done?

Ans. I did not live on the land, or have anything more to do with it. I supposed that I retained possession until it was again decided to

173 belong to the Gov. I went to Illinois before this decision was made, and Mr. Stark or his agents had put in grain, oats, and wheat while I was gone.

Ques. Was there any other improvements upon said premises other than that made by you and the two or three acres broken by Mr. Stark?

Ans. There were no other breaking or improvements that I know of, except Mr. Stark's shanty. I have seen the land since, but not since last summer. Mr. Van Pelt had commenced breaking some prairie then.

ARTEMUS ROBERTS.

Subscribed and sworn to before me this 11 day of July, 1872.

Adjourned until 9 o'c. a. m., July 12, 1872.

JULY 12, 1872. Register ruled that C. E. Van Pelt should pay the expenses of his pation of the testimony; whereupon the attorneys for C. E. Van Pelt filed and offer to introduce certain testimony. Said offer hereto attached and marked Exhibit A.

And now comes A. L. Palmer, M. H. Sissons, and W. F. Chapin,

174 counsil for F. G. Stark, pre-emption claimants for said land, and

denies the statements made in the foregoing Exhibits A and challenges the said C. E. Van Pelt to the proof of the same, and although not required by law so to do, does hereby become responsible for making such proof.

And now comes the said C. E. Van Pelt and states that he has been refused to have said witnesses examined by said register, unless he, the said Van Pelt, would first advance the fees in this case for the taking of said testimony, and which order is still adhered to by said register, as will appear by the certificate of said register from Exhibit A.

SAMUEL MCCORD, being sworn, testified as follows, to wit:

I know Mr. Stark; have known him about two years; and I have known Mr. Van Pelt something over that. I have known where this land in dispute was situated about 18 months.

Ques. State, if you know, what improvements was placed upon said premises by C. E. Van Pelt.

175 Ans. I was there last fall and put up a small barn for Mr. Van Pelt. I was never there before or since. He had a house one story high, and 16x28 or 30 feet. The house was plastered and painted; he had a privy; he has a well there; I don't know anything about his breaking; I don't know whether it was in his or not. I know there was breaking there.

Ques. State what said improvements of said C. E. Van Pelt were reasonably worth, not taking into consideration any breaking upon said premises.

Ans. It would be pretty hard to answer, but I should think that at the time he put the building there, and what improvements I saw, they were worth in the neighborhood of seven hundred dollars.

Ques. State whether he, said Van Pelt, was residing in his house upon said premises at that time with his family.

Ans. He was there with his family last fall, when I was there; he was living there; I took my dinner with him.

Ques. State whether or not you are acquainted with the general

176 reputation of said Francis G. Stark in the neighborhood in which he has lived, for truth and veracity.

Ans. So far as I know the reputation given to me by men that know him better than I do, it is a very poor one to me.

Ques. From that reputation would you believe him under oath?

Ans. And what I know about him, I would not.

Cross-examined:

Ques. When was Mr. Van Pelt's house built?

Ans. I am not able to say; but I think it was a year ago last spring.

Ques. When did Mr. Van Pelt move upon this land?

Ans. I do not know.

Ques. When did he move off this land?

Ans. I don't know that he ever moved off. He went back to Kentucky last June; I think his wife went back on a visit, and he went after her.

Ques. Has Mr. Van Pelt lived in that house since he came back?

Ans. I am not able to say.

Ques. How far do you live from the land in controversy?

Ans. From what Mr. Stark told me, it was about two miles. I live in this city.

S. T. McCORD.

177 Subscribed and sworn to before me this 12th day of July, 1872.

J. M. YOUNG, being sworn, testified as follows:

I am acquainted with the land in controversy and the parties of this suit.

Ques. State whether or not you are acquainted with Francis G. Stark in the year 1868, and also with one Mr. Porter; and if so, state what you know, if anything, about the transfer of a homestead right to the land in controversy.

(Objected to, on the ground that it is incompetent and irrelevant, and has no tendency to prove or disprove the issue in this case.)

Ans. I am acquainted with Mr. Porter and with Mr. Stark, and have been since 1865. Mr. Porter came from Iowa to my house some time in the fall or early winter of 1865, hunting a homestead or claim. I referred him to Mr. Stark's claim. He made an arrangement with Mr. Stark
178 for his homestead claim, for which he was to give him one hundred & sixty dollars for the claim. Mr. Porter made me his agent to pay on said contract or claim. I believe that I turned some 75 dollars in which Mr. Stark owed me, and notes in two payments were given for the rest, which were paid out. I paid them myself. Mr. Porter got the certificates, and I think I saw the same in my own house, and that we talked about the matter and the transfer.

Ques. State whether said Stark, under said sale, delivered up the premises to the said Porter; and if so, what became of the said Stark.

Ans. Mr. Porter came on in the spring of 1866 and took possession of the property, and remained possession until he got afraid that the railroad company would hold the land; then he went and hunted another claim. Mr. Stack moved away over on Steven's Creek, and raised a crop there on the widow Lamp farm. From there he moved to Plattsmouth, as I understood; I don't know.

179 Cross-examined:

Ques. Do you know what part of the land in dispute Mr. Starks was living at the date of the transfer referred to by you?

Ans. In a sod-house near the SW. corner of the west forty, as near as I can remember.

Ques. Do you know upon what portion of the land the house is that he now resides in?

Ans. I have been at the door of the house where he now lives, and it is not in the same place; it is farther east, from 80 to 100 rod', and on the same tract of land.

J. M. YOUNG.

Subscribed and sworn to before me this 12th day of July, 1872.

PHILLIP HOCKER, being sworn, testified as follows, to wit:

I am acquainted with the land in controversy and the parties in this

case. I have known this land in controversy since 1865. Mr. Stark was in possession of the land at that time, and had a sod-house upon it at that time.

180 Ques. Have you ever had any conversation with Mr. Stark with reference to his selling his interest in this land to any one; and if so, what was said conversation, when was it, and where?

Ans. Yes, sir; it was a year ago last spring. He came to my house to buy a load of hay, and I asked him how he was getting along with his land, and he said he hired Chapin to get it for him, and give him forty acres of the land.

Ques. Did he designate what Mr. Chapin?

Ans. He did; the Chapin that was in the land office.

Ques. Did you have any conversation with him with reference to selling ten acres of land; if so, state what said conversation was, and when it was?

Ans. He said that he sold Chapin ten acres for five hundred dollars. He told me the same time he told me the other.

Ques. State whether or not you are acquainted with C. E. Van Pelt, the contestant in this case, and what improvements he has placed upon the land; and if any, when, and the value of the same.

181 Ans. I am acquainted with Van Pelt; he has put a house on the land; I can't tell what other improvement he has on the land; I have not been on that part of place for over a year; the house is worth, I suppose, two hundred dollars or over. I know of some of the improvements that Stark put on; I don't know how much.

Ques. What was the value of the improvements that Stark put on at that time?

Ans. I suppose $25 or $30.

Ques. State whether or not in April, 1871, you had any conversation with Mr. Starks in which he told you that he had no pre-emption upon said land, but was holding it under his homestead; if any such conversation please state it and the time when it was.

Ans. He told me that he was holding it then as a homestead, and that he intended to prove up on it in June; that he had lived in it five years out of seven, and he would prove it up; he told me so in April, 1871; I asked him if he was going to enter, and he said he was;

182 that he would have only to pay the homestead fee and would save money.

Cross-examined:

Ques. Was this conversation that you had with Mr. Stark about Chapin having forty acres of the land, also his selling him ten acres of the same for five hundred dollars, all in the same conversation and at one and the same time?

Ans. It was in the spring of April, 1871; he came to my house.

Ques. Was there any one present and heard the conversation?

Ans. There was a man there, but he had just left and did not hear the conversation.

Ques. State for who and what purpose Mr. Stark wanted the load of hay, if you know.

Ans. He said he had a team of Mr. Chapin and he wanted hay to feed it.

Ques. Do you know what kind of a team it was, whether oxen or horses?

Ans. I can't say positive, for it was about the time that he changed a pair of oxen for a team of horses that he said were also Chapin's.

183 Ques. Are you shure that this conversation was in April, 1871?

Ans. Yes, I am.

Ques. Are you on friendly terms with Mr. Stark, and have you any unkind or ill feeling toward him?

Ans. We never had any quar'el, and I have no unkind feeling.

Ques. Did not your wife procure a bill of divorce from you at the last term of the district court in Lancaster Co. for cruelty, and was not Mr. Stark a material and important witness against you in proving the facts in the case.

(Objected to on the ground of incompetency and irrelevancy and no way connected with this case.)

Ans. She got a divorce and he was a witness, but all I heard him swear to was the value of the land; he swore the land was worth 30 dollars an acre.

P. A. HOCKER.

Subscribed and sworn to before me this 12' of July, 1872.

A. J. DEWEY, being sworn, testified, as follows:

I am personally acquainted with Mr. Van Pelt, and know Mr.

184 Stark by sight; I am acquainted with *with* the land in controversy.

Ques. About what time did C. E. Van Pelt 1st move upon this land in controversy?

Ans. I think one year ago last fall, and I am positive he was living there one year ago last winter.

Ques. What improvements, if any, had he upon this land in the summer of 1871?

Ans. He had a house and a well; the house, I should judge, was 22x12 feet; he also had a hog-pen there with hogs in it, and some breaking; I could not say how many acres.

Ques. Was you there frequently in the last year?

Ans. I have been there several times in the last year; Mr. Van Pelt were living there; the house was painted and well finished; I could not say exactly what is the value of the improvements that I saw there; I should judge about five hundred dollars.

Cross-examined:

Ques. Do you mean to say that Mr. Van Pelt moved onto this land with his family one year ago last winter?

185 Ans. It was in the fall, I think, a year ago.

Ques. When did Mr. Van Pelt move off this land in controversy?

Ans. I don't know that he has moved off yet; his things, I understand, are in the house yet.

Ques. Where did Mr. Van Pelt board this last winter and fall?

(Objected to on the ground that the question is not cross-ex.)

Ans. Last fall he lived out to his place; stayed out there, I guess, all of the time in the latter part of winter that he took his meals with some boys that were keeping bach. I could not say where he did take them all of the time. Part of his meals he took with the boys that kept bach.

Ques. Do you know of your own knowledge that Mr. Van Pelt has lived upon this land with his family any of the time during the last eight months?

Ans. I think he has, but I can't say *say* positively.

Ques. What portion of the time to your own knowledge has he lived there in the last eight months with his family?

186 Ans. He lived there the first part of the time.

Ques. State how much of the 1st portion of the time he lived there.

Ans. I can't say exactly.

Ques. Do you know that he lived there one week with his family during the first part of the last eight months?

Ans. I am pret'y confident he did.

Ques. Did he live there at the time with his family more than one week? State definit'ly.

Ans. I cannot state definit'ly. I think he stayed there about six weeks.

Ques. Where do you live, Mr. Dewey, and how far from the land in controversy have you been living during this time (the last 8 months)?

Ans. Part of the time I have been living in town here; the most of the time one mile and a half or two miles distant from this land in controversy.

Redirect:

Ques. Is it not the fact that Mr. Van Pelt has never moved away from this land and that while he was absent from the same, he was only absent temporarily? If so, state where he was.

(Ques. objected to, being leading and improper in every respect.)

187 Ans. He was away for a short time during the last eight months; he went away this winter late or in the spring; he went to Kentucky after his wife.

Ques. Did Mr. Van Pelt, at that time, when he went after his wife, leave his cooking utensils and household furniture in his house upon this land, or did he take them with him to Kentucky?

Ans. I don't think he took them to Kentucky; I saw him go off on the train with a valise in his hand; nothing else only a valise; I think he must have left them in the house.

A. J. DEWEY.

Subscribed and sworn to before me this 12 day of July, 1872.

RICHARD W. TAYLOR, being sworn, testified as follows:

Ques. Are you acquainted with Francis G. Stark, the party to this suit, and his general reputation for truth and veracity in the neighborhood in which he lives? If so, state what that reputation is.

188 Ans. It's that old gentlemen there, is it? If so, I know him; I am acquainted with his general reputation for truth and veracity, and it is not very good.

Ques. Who had you reference to when you said that old gentleman

there, was it, Mr. Stark, the claimant in this case, or Mr. Sessions, his attorney?

Ans. Mr. Stark.

Ques. From that reputation, would you believe Mr. Stark under oath?

Ans. I should hardly believe him, I think.

Cross-examined:

I reside in Lincoln; I have never been at Mr. Stark' house where he now lives.

Ques. How far does Mr. Stark reside from Lincoln?

Ans. I cannot state.

Ques. Do you know his immediate neighbors?

Ans. I do not.

Ques. How much or intimat'ly have you know' Mr. Stark for the last two year' and a half?

Ans. I first knew Mr. Stark about two years ago; I have seen him several times and had some business with him.

189 Ques. Have you ever heard any of his immediate neighbors say anything about his character for truth and veracity? If so, state who they were and where and when it was.

Ans. Not knowing any of his immediate neighbors, I could not state.

Ques. You have said that you was acquainted with his character for truth and veracity in the neighborhood in which he lives; now, if your last answer is true, how can you swear that his reputation is bad in the neighborhood in which he lives?

(Objected to for that the witness has not stated that he was acquainted with his reputation for truth and veracity in the immediate neighborhood.)

Ans. In Lincoln, where I have had business with him.

Ques. State who and when and where you have heard call' in question his reputation for truth and veracity.

Ans. I have heard Mr. R. S. Brooks, at Lincoln, about a year ago, say that Mr. Stark had lied to him; I think I have heard Docter Wright's sons about the same time say that he had lied to them, and he has

190 lied *lied* to me repeatedly; I don't know of any others, but I presume there were others, but I can't think of them.

Ques. Does not R. S. Brooks live in Crete, 20 miles distant from the land in question, and has he not lived there for the past year?

Ans. He now lives at Crete; the time he moved there to live I can't state; I have seen him in Lincoln since that time, and it was in Lincoln that he told me this.

Ques. Do not Doctor Wright's sons live in the co. of Seward, 30 miles distant from this place, and have they not resided there for the past two years?

Ans. I believe they live there now; I have heard so at least. How long they have lived there I could not state. When they told me this they were cutting hay for Stark near Lincoln; I think this was about two years ago in August.

Ques. This is the reputation from which you swear that you would not believe him under oath?

Ans. Yes; and my own dealings with him.

R. W. TAYLOR.

Case adjourned until 9 o'c. a. m., Monday, July 14, 1872.

191 F. G. LAWRENCE, being sworn, testified as follows, to wit:

I am acquainted with the land in controversy, and the parties to this suit.

Ques. State if you know when Mr. Van Pelt moved upon this land, and what improvements he put upon it.

Ans. In November, 1870, he moved upon the land; he built a house 16x26, one story high with shingle roof; the house is painted.

Ques. State where Van Pelt has resided and made his home from that time to the present.

Ans. He has made his home on said land since he settled on it up to the latter part of last Feb'ry; he went away on a visit to bring his wife home; he left his furniture in his house when he went to visit Kentucky. I should judge his improvements are worth one thousand dollars.

Ques. State what improvements Mr. Stark has upon the land.

Ans. He had two or three acres of breaking and a house worth about 25 or 30 dollars.

Ques. State how much breaking has been done by Mr. Van Pelt
192 as near as you know.

Ans. About 15 acres.

Cross-examined:

Ques. How much of the time since the 1st of Feb'y last has Mr. Van Pelt and his family resided in this house upon this land, to your own personal knowledge?

Ans. Not a day, to my knowledge.

Ques. How do you know that he went to Kentucky he left his household furniture in his house?

Ans. I was at and in his house about a month after he went away, and his furniture was there then.

Ques. Do you know, of your own knowledge, that the furniture is in the house at this time, and that it has remained there from the time you saw it there until the present?

Ans. I do not.

F. G. LAWRENCE.

Subscribed and sworn to before me this 15th day of July, 1872.

THOMAS JENSEN, being sworn, testified as follows:

I am acquainted with Mr. Van Pelt and Mr. Stark, and I am acquainted with the land in dispute.

193 Ques. State whether or not you did any breaking upon the premises, and if so, who was it done for and when was said breaking done?

Ans. I broke twenty-five acres on that land two years ago for one Mr. Roberts, in June and July.

Ques. State what breaking had been done on said premises beside that which you did for said Roberts.

Ans. I could not say how much I saw; a small piece of breaking. I did not pay any attention to it, but I should judge about five acres.

Ques. During the months of June & July in year 1870, did you have any conversation with said Stark as to how he claimed said premises?

Ans. Well, from the conversation I had with Mr. Stark, I understood that he had homesteaded the land and held it as a homestead.

Ques. State whether you had any conversation with said Stark during the month of June & July, 1870, as to his having disposed of said premises, or a part thereof, to any one.

194 Ans. From the conversation I had with him—I had a conversation—I understood that a lawyer in Neb. City—I think his name was McCracken—that he was to have one forty of it, or was then claiming one forty.

Ques. Did or not the said Stark state that he had contracted one forty of the said land to the said McCracken?

(Objected to for the reason that the question is improper and leading.)

Ans. He did not positively state so.

Ques. State as near as you can, what Stark did say in relation to the said McCracken.

Ans. I think he said McCracken had offered to hold it for him for one forty of it, as against the railroad company; that was the way I understood it. I understood that he agreed to it; this was two years ago, and I paid no attention to it.

THOMAS JENSEN.

Subscribed and sworn to before me this 15th day of July, 1872.

JOHN DILLMAN, being sworn, testified as follows:

195 I am not acquainted with Mr. Stark. I am acquainted with Mr. Van Pelt, and with the land in controversy.

Ques. How long have you been acquainted with Mr. Van Pelt, and the land in question?

Ans. One year ago last June.

Ques. State where Mr. Van Pelt has been living since you became acquainted with him.

Ans. He has been living on this place until he went down to Kentucky after his wife, I think the 27th of Feb'y, 1872.

Ques. State what became of his goods, &c., while he was absent and in Kentucky, since 27' Feb'y, 1872.

Ans. He left me in charge of them, and I took care of them until he came back; there were some things taken while he was gone away from his house; he left his goods on his place, and I took care of them the best I could.

Ques. State what improvements Mr. Van Pelt has made upon his place.

Ans. He has 15 acres broke; a house; the house is painted; he has a barn, and privy, and a well.

Ques. State if you know how much said improvements are worth.

Ans. I don't know.

196 Ques. State if you know whether or not Mr. Van Pelt proved up and paid for his place; and if so, when was it?

(Objected to, for the reason that the question is incompetent & immaterial, the record being the best evidence.)

Ans. He proved up a short time he went away to Kentucky; I don't know the date.

Cross-examined:

Ques. What business has Mr. Van Pelt been engaged in since you knew him?

Ans. He has been painting in the city of Lincoln.

Ques. Did Mr. Van Pelt plow and cultivate the land broken there in the year 1871?

Ans. I don't know.

Ques. Is he cultivating the land this present summer?

Ans. He is not. I do not think any one is cultivating it this season. Mr. Van Pelt left his bed and bedding in his house when he went to Kentucky; it was there the last time I was there.

Ques. Has Mr. Van Pelt resided upon this land since he returned from Kentucky?

197 Ans. Not that I know, but he has been out there several times since he came back.

Ques. When did Mrs. Van Pelt go to Kentucky?

Ans. I think it was in November. I am not sure.

Ques. Where did Mr. Van Pelt board while she was at Kentucky?

Ans. He stayed on his place the most of the time; do not know where he has boarded since he came back, but it is in town.

JOHN DILLMAN.

Subscribed and sworn to before me this 15th day of July, 1872.

Adjourned until one o'c. p. m.

M. M. CUHN being sworn, testified as follows, to wit:

I am acquainted with the land in controversy and the parties in this suit.

Ques. State what improvements there on this place put there by Mr. Stark, and also the amount of improvements put on by Mr. Van Pelt, also by Mr. Roberts.

Ans. There is about twenty-five acres broke on the 40 on which Mr. Stark resides. Mr. Roberts is a party that I do not know in the

198 question. Mr. Van Pelt's breaking, it is my impression; there is not far from ten or twelve acres. Mr. Van Pelt's house, I should say, was about 14x18 feet, finished in very comfortable style, costing, perhaps, about three hundred dollars. He has a well, I think. He has a shed or stable. I have passed near enough to the house since it was built to form a reasonable conclusion as to what it is. I have never been in the house. I believe I was where I could see in the house once since I was near the house. I have passed the place where I could see some indication of a stable or shed.

Ques. This breaking that you speak of above, how much was done by Mr. Stark or his agent?

Ans. I think about five acres was done by Mr. Stark, and the balance was done by one Mr. Jansen. My understanding was that upon certain conditions Mr. Stark became responsible for the breaking of this. However, I know nothing only from hearsay.

Ques. What time was this breaking done by Mr. Jansen?

199 Ans. Principally in June, the latter part, and some in July, two years ago.

Ques. Did you or not have any conversation with Mr. Stark in relation to his disposing of or having disposed of a portion of this land?

Ans. I don't know that I ever did; if I did, it has passed my mind.

Ques. Did he ever at any time tell you that Mr. Chapin was to have a portion of it; and, if so, when was it, and what was said conversation?

Ans. I do not remember of every hearing Mr. Stark say that he had sold it.

Ques. State what the improvements of Mr. Stark there are worth.

Ans. Mr. Stark has made an addition to his house this season; summing his improvements up at about 75 dollars, I should say, other than the Jansen breaking.

Ques. What are the improvements of Mr. Van Pelt worth?

Ans. At the present I should think they are worth about three hundred and twenty-five dollars.

Ans. In estimating the value of Van Pelt's improvements on said premises, what size do you fix the house?

200 Ans. As nearly as I can fix it it is 14x18 feet. I have not noticed it very particularly.

Ques. Now, if it should turn out as a matter of fact that the building was 16x30 feet, would not your estimate heretofore placed be too low?

Ans. I think that it would be too low.

Cross-examined:

Ques. State if Mr. Stark has not increased the value of the land by cultivating and improving the land broken by Mr. Jansen the past year and the present year; and, if so, how much, and was this included in your latter estimate?

Ans. It was not included in the latter estimate, but I am unable to say what portion of the land is tilled this year. The value of the land has been increased by cultivation. I cannot approximate the amount, for the reason that I can't say how much was cultivated this year and how much last year.

Ques. State, if you can, how much it would be increased in value, providing the whole of the land broken by Jansen had been put in

201 corn, wheat, and oats last year, and the major part of it the present year.

Ans. I think the value of the land is increased about sixty dollars more than it would have been had it been left in the condition in which Jansen left it.

Ques. Would the breaking done by Jansen been any improvement to the land had it been left without cultivation from that time to the present?

Ans. It would hardly have increased its value if left in that condition until the present. My house lies just across the *the* road from a part of these premises.

M. M. CULVER.

Subscribed and sworn to before me this 15th day of July, 1872. Case continued until Aug. 15, 1872.

(On margin:) Stark & Van Pelt.

FRANCIS G. STARK, introduced on part of C. E. Van Pelt, testified as follows:

Ques. State whether or not you are acquainted with G. A. Newman, and whether you are connected with him in any way; and if so, how?

Ans. I am acquainted with him. He is my son-in-law.

202 Ques. State whether or not you were every in Washington Co., State of Nebraska; if so, state when.

Ans. I have been, some seven or eight years ago.

Ques. State where you were on or about the tenth day of March, 1860?

Ans. I can't tell exactly unless I am at home, for I was dodging around from one place to another. I owned a patent for a water-wheel at that time. I was engaged in selling that wheel. I don't know whether my family were at that time in Calhoun, Washington Co., Nebraska, or whether they were 40 miles west of there, or eight miles from Fontenelle (west) on Logan Creek, about one mile and a half or two miles from its junction with the Elk Horn.

Ques. Are you acquainted with the location and the Nos. of the land in the neighborhood where you say your family might have resided at that time?

Ans. I am not.

Ques. How long did your family reside in the neighborhood of Logan Creek?

Ans. They did not stay right there but a short time.

203 Ques. State whether or not the said George A. Newman was also in that neighborhood during the spring of 1860.

Ans. I can't tell whether he was not. He was west of Fontenelle awhile and he went to Wisconsin awhile, and he then came back to Lincoln, or in the vicinity. Mr. Newman was my son-in-law then.

Ques. Did you, at that time, have a son-in-law by the name of Sidney Reese, and if so, where did he reside at that time?

Ans. I had, I guess, about March, 1860; he pre-empted a piece of land in Logan Creek; cannot give the Nos., as I did not have anything to do with land at that time. Prior to coming here I always gave my attention to handling machinery.

his
FRANCIS + G. STARK.
mark.

Witness:
M. H. SESSIONS.
S. L. CANNON.

A. S. BALDWIN, being 1st duly sworn, testified as follows:

Ques. State whether or not you are acquainted with the signa-
204 ture of Frank Welch, register of the land office at West Point, Nebraska, and state whether the paper now shown you, and marked Exhibit C, contains the signature of Frank Welch to the certificate thereto attached. State whether you saw said Frank Welch sign his name thereto.

Ans. I am not acquainted with the signature of Frank Welch, but I know that the signature of Frank Welch to the exhibit in question is a genuine one, because I saw him sign it in his office at West Point, Nebraska.

Ques. State whether or not you examined the original paper on file, of which this is a transcript, of which the paper now shown you, and marked Exhibit C, and state whether said paper is a true copy of the original declaration of Francis G. Stark, on file in the office at West Point, Nebraska.

Ans. I examined the original d. s. and compared it, word for word, with the paper now filed as Exhibit C, and said Exhibit C is a true copy of said original d. s.

A. S. BALDWIN.

205 Subscribed and sworn to before me this 10th day of September, 1872.

(Said C. E. Van Pelt offers in evidence paper marked Exhibit C, and refer'ed to by the said A. S. Baldwin, and offers the same, together with the certificate thereto attached, as evidence in this case.)

Adjourned until 8 a. m. Sept. 11, 1872.

On this 25th day of Sept., 1872, case resumed, and the attorney for C. E. Van Pelt offered in evidence certified transcripts from the U. S. land office at West Point, Nebraska, Exhibits E and F, and hereto attached, and made a part hereof, and they also offers in evidence a certificate of filing of the said Francis G. Stark in the S. 2 NE. 4 & S. 2 NW. 4 sec. 10, T. 19, R. 8 E., and issued at the U. S. land office at Omaha, Neb., August 29, 1860, by John A. Parker, jr., register, said certificate marked Exhibit G and made a part hereof. They also offer in evidence the depositions of Charles F. Eisby and Harvey J. Robinson, witnesses on
206 part of C. E. Van Pelt, taken at the office of the co. clerk of Dodge Co., Nebraska, at the city of Freemont, on the 17th, 18, and 19 days of September, 1872, pursuant to notice thereto annexed, said deposition hereto attached, marked Exhibit H and made a part hereof, and they also offer in evidence a certified copy of the letter of the Commissioner *to* the General Land Office to the register and receiver at Lincoln, dated Feb'y 6th, 1872, allowing C. E. Van Pelt to commute his homestead, which is hereto attached and marked Exhibit I, and they also offer in evidence a certified transcript of the record in the Lincoln land office with reference to the land in controversy, so far as the same concerns the present claimants, which is hereto attached and marked Exhibit K.

CHARLES E. VAN PELT, being duly sworn, testified as follows:

Ques. State whether or not you are one of the parties claiming the land in controversy.

Ans. I am.

Ques. State when and where you first made application to pre-empt or homestead the land in controversy.

207 Ans. It was some time between the first of June and 1st of September, 1870, that I made application to pre-empt the land at the U. S. land office at Lincoln, Nebraska.

Ques. Was the application made in writing?

Ans. It was made in writing in the regular order, and was rejected by the local officers for the reason that the same was claimed by the railroad company.

Ques. Were the reasons for the rejection endorsed upon the application?

Ans. They were endorsed by the register.

Ques. You may state what was then done with the application.

Ans. The application was then sent to Washington, I think, to the Sec't'y of the Interior or the Commissioner.

Cross-examined:

Ques. Do you swear that this application was made on the 1st of June, 1870?

Ans. The application was made between the 1st of June and the 1st of September, 1870, was my answer.

Ques. So there nothing by which you can fix the time or
208 approximate near' than from the first of June to the 1st of September?

Ans. I made no memoranda of the date, but the application is on file at Washington, and will show for itsself.

Ques. Will you swear that the application was not made on or about the 1st of July, 1870?

Ans. I will not swear to any exact date.

Ques. Will you swear that it was made before the 1st of September, 1870?

Ans. I will.

Ques. How long before?

Ans. I' was between the first of September and the 1st of June, 1870.

Ques. How do you know that the papers were sent to Washington?

Ans. Because I got returns from them. I got notice that they were there.

CHARLES E. VAN PELT.

Subscribed and sworn to before me this 25th day of September, 1872.

A. S. BALDWIN, being recalled, testified as follows on part of Francis G. Stark:

Ques. You may state from whom you obtained paper marked Exhibit G.

Ans. I obtained the paper marked Exhibit G from one John
209 Seely in Dodge County, Nebraska.

A. S. BALDWIN.

Subscribed and sworn to before me this 25th day of September, 1872.

SIDNEY REESE, being recalled, testified as follows:

Ques. State if you ever lived in the vicinity of Logan Creek, Neb.; and, if so, describe the land you lived on.

Ans. Yes, I lived there; the number of the land I cannot remember. I lived on the north side of Logan. I lived there about two years. I lived there in 1860 & '61. In the spring of 1860, I went there. I sold out my filing to Henry J. Robinson; do not recollect the description.

Ques. Where did Francis G. Stark live at the time you lived in the Logan?

Ans. He lived with me the 1st year; the next year he lived on Sullavin Gaylords' place, about a mile and a half from my place, east.

Ques. State how far and in what direction from your place is the mill privilege that Robinson purchased?

210 Ans. About 20 rods east from the east line of the land that I claimed. I mean that it was about 20 rods down the creek from my south lines.

Ques. You may state if Francis G. Stark ever made any settlement or improved upon that mill prop. *after* afterward improved by Robinson while you were liveing there.

Ans. No; he did not.

Ques. You may state whether he claimed it as his.

Ans. Never, that I know of.

Ques. Who did improve it and who afterwards sold it and received the pay while you were there?

Ans. Geo. A. Newman claimed it and made improvements on; built a dam for saw-mill. Newman sold it and received the pay, that is, what was paid.

Ques. Who did he sell it to, what he was to get, and what he did get?

Ans. He sold to Henry J. Robinson; he was to get a pony and $50 in money; he got, I think, about $10 in flour. That is all I know. John Seely was to furnish the pony; he never got the pony.

211 Ques. Where was Mr. Stark living at the time the sale the property was made?

Ans. On Sullivan Gaylord's place, about 1½ miles from the mill.

Ques. Where did Mr. Newman reside at that time?

Ans. He was on his own place; it was south of west from there about one mile.

Ques. Do you know what claim Mr. Newman had upon the land where he was residing?

Ans. He said he had the filing on it.

Ques. Did Mr. Stark ever assert any claim to or make any settlement upon the tract upon which Mr. Newman resided?

Ans. No; he did not.

Quest. Do you know of his ever having or claiming to have a filing upon it?

Ans. Not to my knowledge he never did.

Ques. Do you say that Mr. Stark lived with you upon your land all the time he lived in the vicinity of the mill?

Ans. He did the 1st year until the spring of '61, and then moved to Sullivan Gaylord's place.

Ques. Was Mr. Stark gone from your house in the month of August, 1860, to Omaha long enough to make a filing?

212 Ans. Not that I ever knew of, he was not.

Ques. How far was your place from Omaha about?

Ans. 50 miles.

Ques. What was the condition of Mr. Stark's health at that time?

Ans. He was a little better than he is now, but has not been an able-bodied man for a No. of years.

Ques. What was his means of communication with Omaha, or how would he have to travel to get there?

Ans. I would have to go on foot.

Ques. Are you acquainted with Harvey J. Robinson?

Ans. Yes.

Ques. Do you know what his reputation for truth and veracity was in the neighborhood; if so, state what it was?

Ans. He was a man who about done as he was a mind to. I do not know; there was not many there who were partially acquainted with him; these it was not very good; that is, those with whom he had dealings did not rely upon his word.

Cross-examination:

Ques. Where do you now reside?

Ans. On this land in controversy.

213 Ques. State what relation you are to Mr. Stark.

Ans. He is my father-in-law; he has been my father-in-law about 18 years.

Ques. Who claimed the tract upon which the mill site spoken of is situated at the time you lived on Logan Creek, and under what title was it claimed?

Ans. Geo. A. Newman claimed it. What the title was I do not know.

Ques. Do you know anything about Stark filing upon this mill-site land at any time while you were living in that neighborhood?

Ans. No; I do not.

Ques. How long did Newman claim to own this land and exercise ownership over it?

Ans. About six months; about long enough to build a dam.

Ques. About what time did he commence to claim to own the land?

Ans. I do not know the exact time. It was the 2d year; in 1861, I think.

Ques. How long after that was it when he sold it, to whom did he sell, and were you present at the sale?

Ans. He had it about six months, then sold to Harvey J. Robin-

214 son. I was not present at the sale.

Ques. How do you know that he so sold it, and the price he received for it?

Ans. I got it from H. J. Robinson.

Ques. When did H. J. Robinson tell you about , and where?

Ans. When we were at work on the dam; soon after he bought it.

Ques. In what month did Robinson commence the dam?

Ans. I do not know in what month. It was in the summer—the 1st part. I worked on the dam from the time the 1st brush was put in until the saw-mill was running.

Ques. In what part of '61 did Newman sell this claim to H. J. Robinson?

Ans. It must have been in the forepart of the year '61.

Ques. When did you go into the Army, and how long before that time did Robinson commence this dam?

Ans. I went into the Armony in Oct., '61. He commenced the dam two or three months before; it was a brush dam.

Ques. In what part of the year 1861 did Newman commence to claim the land?

Ans. I don't remember.

215 Ques. Did Newman reside on the other tract of land that you spoke of that he claimed under a filing during the years 1860–'1?

Ans. He went there in spring of 1860. I think he went there before I did—that is, a very short time—and came away about the time I did—that is, in the fall of '61.

Ques. Under what title do you say that Mr. Newman held the tract of land upon which he lived?

Ans. Under pre-emption filings.

Ques. Did he make his home there all of the time that you lived in that vicinity?

Ans. Yes, sir.

Ques. How far was Newman's lands upon which he lived from this mill-site property?

Ans. We used to call it a mile to his house.

Ques. During what time did Mr. Stark reside with you on the Logan?

Ans. He staid with me the 1st year I was there.

Ques. Did you and Mr. Stark and Mr. Newman live on friendly terms and exchange visits during the time you all lived in the vicinity of Logan Creek?

216 Ans. I worked for him backwards and forwards on the dam, etc. I think we were on *were on* good terms.

Ques. Was Mr. Newman in the habit of calling at your house during the time Mr. Stark lived with you and talking over matters of general interests?

(Objected to as irrelevent.)

Ans. He was.

Ques. When did Mr. Stark move from your house to Gaylera's place?

Ans. In the spring of '61.

Ques. What did Mr. Stark do while he lived with you, and what did he do after he moved to the Gaylere place?

Ans. He worked with me by day's work; for Newman and others cutting hay, and all kinds of work that he could get to do; he farmed the Gaylare place when he moved on it.

Ques. Did Mr. Stark do any work with you on Newman's dam?

Ans. He did.

Ques. During the time that Mr. Stark lived with you how many times was he gone from home any length of time?

Ans. I do not remember of his being absent but once, and then

217 he went to Platte Valley for a stove for H. J. Robinson.

Ques. What year and month was it?

Ans. It was in the forepart of the summer 1861; don't recollect how long. It was a short trip over there.

Ques. Was that the only time he was gone from home?

Ans. That was the only time I remember his being away from home.

Ques. Were you ever away from home for any length of time?

Ans. Yes; I was sometimes gone 2 days at a time, goeing, coming, city and back.

Ques. In what year was it you were in the habit of going to, coming, city and back?

Ans. I was in the habit of going visiting there?

Ques. Did you go there in August, 1860?

Ans. No; I did not.

Ques. Were you personally acquainted with Harvey J. Robinson, and, if so, how long were you so acquainted with him?

Ans. I was acquainted with him about a year.

Ques. Where did he reside before he bought the mill priviledge, as you say, and when did he come to Logan Creek to live?

218 Ans. He lived on Maple Creek before he bought the mill site. He came to Logan Creek to live in the spring of 1861, I believe—I know, because I lived in the house with him.

Ques. How you know that at that time Mr. Robinson's reputation was bad in the neighborhood?

Ans. All I knew was by what people said. They broke into his (Robinson's) house and took everything he had. He always treated me well.

Ques. Did you have confidence in Harvey Robinson at that time?

Ans. I did.

Adjourned till 10 o'clock p. m.

Redirect:

Ques. For what purpose did they break into his house and take his goods out?

(Objected to as intirely irrelevant and immaterial.)

Ans. For debts.

his
SIDNEY REESE.
mark.

Witness:
E. K. ALDRICH.

Sworn to and subscribed before me this 26th day of September, 1872.

GEO. A. NEWMAN, being recalled, testifies as follows *as follows:*

(Witness was here shown certified copy of declaratory statement, marked Ex. C.)

219 Ques. Can you explain the circumstances of its filing, and the circumstances connected with it?

Ans. I made a filing in Mr. Stark's name, about that time, on the same tract of land, NE. ¼, sec. 9, T. 19, R. 8. I moved from Cuming City to Logan Creek about the 1st of March, 1860. I selected a piece of land that I expected to *sell* on, lying in sec. 11, same township. I think I went to commence work on it, and was told it was entered by a man in Omaha, the next day after this, which was Sunday. I was told of this piece of land in sec. 9. I went onto it the next morning and laid a foundation and walked to Omaha the same day. The next day I filed on the land. I could not file in my own name. I had had a filing before near Cuming City, and I filed in Mr. Stark's name. Mr. Stark was not there. He had gone to Cuming City for a load of household goods. I got home the next day after filing. Mr. Stark was home when I got back. I told him about the filing, and he did not like it. He said

220 he would not be able to pay for it, and he had not team to *to* work it, and would just loose his pre-emption right. He never moved on the place; never improved it or occupied it.

Ques. Did he know that you intended to file on the land in his name before you went to Omaha?

Ans. He did not know it, I am sure. He had never been on the land at that time.

(Witness was here shown copy d. s., marked Ex. E.)

Ques. Have you any recollection of this d. s., and, if so, state what your recollection is?

Ans. I am not positive about this d. s. I was in Omaha in July, and again in August. I cannot tell what time in August. I think it was June the 1st time I was down.

Ques. You can state your business that took you to Omaha in August.

Ans. Partly to trade and partly to enter the 40 acres on which the mill site is situated.

Ques. State if you entered that 40 acres.

Ans. I did not.

Ques. State the reason why.

Ans. I engaged to winter a lot of cattle, 50 or 60 head, and I
221 used the money in putting up the hay, and also on the mill dam.

Ques. Did you or did you not at that time make a pre-entry filing on the S. ½ of NE. ¼ and the south ½ of NW. ¼ sec. 10, T. 19, R. 8 E.

Ans. If my signature is down as a witness I must have made the filing; I was never in Omaha that year with Mr. Stark and don't know of his ever filing on the land; my wife and Mr. Reese were with me that time; that is in August.

Ques. You can state if you ever told anybody that at that time you filed on this piece.

Ans. I can't say that I did unless I told my wife; did not know what was said about it.

Ques. If you told your wife at that time, was it true that you made the filing on said land, that is, the mill privilege?

Ans. It was.

Ques. Do you know of Stark's claiming the land or settling upon it at any time?

Ans. No, I do not; there was no improvement on it except the
222 *the* dam that I put on it.

Ques. Who took the land in question after you left it and what became of it?

Ans. I sold it to H. J. Robinson; he was to give me a horse valued at $50 and $50 in money.

Ques. Did you ever get your pay; if so, how much?

Ans. I never got to e'ceed $10.

Ques. Who was you to get the horse from?

Ans. I was to get a horse that belonged to John Sealy; Robinson was to get it for me; I did not the horse.

Ques. You can state whether you made any improvements in the prop. before you sold it; if so, state what they were.

Ans. I made a mill-dam across the creek; it was a brush dam.

Ques. You can state if you and Mr. Stark were in partnership in the dam, or whether Mr. Stark had any interest in the claim whatever.

Ans. We were not in partnership; he had no interest the claim that I knew of; I never got any permit from Mr. Stark or any one
223 else to build the dam or sell it; I claimed it and sold it for my own.

Ques. You can state, if you know, whether Mr. Stark contracted to sell the claim to Robinson or whether he did sell it.

Ans. He did not contract to sell nor did he sell it to my knowledge.

Ques. You can state who was present when you sold this property to Robinson.

Ans. Mrs. Starks was present; I cannot say whether Mr. S. was present; it was at his house, however.

Ques. What time of the year was it and what year?

Ans. I think it was the last of June or 1st of July; I was sick of the small-pox at the time.

Ques. When did you put in your dam in the claim.

Ans. I commenced it in July, 1860; finished it in, I think, Dec. the same year.

Ques. Did Reese help you build the dam?

224 Ans. He did.

Ques. Did Stark help?

Ans. He did.

Ques. Did you pay them?

Ans. I hired them both for the work by the day.

Ques. Did you ever have any authority from Mr. Stark to file on this claim, or any other claim for him?

Ans. I think not; not that I recollect of.

Ques. State if acquainted with Harvey J. Robinson, and if so, how long have you been acquainted with him?

Ans. I think I was acquainted with him about 6 months in 1861.

Ques. What was his reputation for truth and veracity in the neighborhood in which he lives?

Ans. It was hard at that time.

Cross-examination:

Ques. How many filings have you made in this State of Nebr., in the U. S. Land Office?

Ans. Four; three or four, not more than four.

Ques. How many in your own name?

Ans. Two.

Ques. In whose name where the others filed?

Ans. In Mr. Stark's name only.

Ques. Where was the 1st file made, and where at, and where is the land located?

Ans. In 1858, at the office in Omaha. The land is in Washington Co.

Ques. When did you make the next filing, and in whose name?

225 Ans. In Mr. Stark's name, in March, 1860.

Ques. Was the 2d filing (that is the one made in Mr. Stark's name) made upon the same tract mentioned in Ex. C, and did you afterwards file upon that same tract in your own name?

Ans. I am sure it was. I did.

Ques. When did you file upon it in your own name?

Ans. I cannot tell. I think it was in the spring of '61.

Ques. How did you come to file upon the tract described in E. C, in your own name, when you say you had already used your pre-emption right before?

Ans. At that time, in 1861, it was generally understood among the set-

tlers that a man had not used his pre-emption right until he had proved up a pre-emption claim. I had not proved up my claim made in 1858, but had abandoned it.

Ques. When did you abandon it?

Ans. In the spring of 1860; it was done before I moved to Logan Creek.

Ques. How did you happen to file upon this tract in March, 1860, in Mr. Stark's name, as you have stated, when you could have filed upon it in your own name?

Ans. The register at Omaha told me that if I filed in my own name, and it was contested, I could not have it.

Ques. How then, did you, in the spring of '61, come to file in your own name?

226 Ans. To keep speculators from entering the land upon which my improvements were; moreover, did not consider that I had had any benefit of the pre-emption law.

Adjourned till 9 o'clock, Sept. 27, 1872; meet at 9.45, Sept. 27.

Cross-ex. was continued.

Ques. When you filed in the tract described in Ex. C, in the name of Francis G. Stark, was the filing made with his knowledge and consent, or did he notify the same after it had been made?

Ans. He had no knowledge of it and did not rectify it.

Ques. Did you make the said filing for Mr. Stark's benefit and his alone?

Ans. I did, if chose to take the piece of land. I offered him the land and he would not accept it.

Ques. What was done with the land by you and Mr. Starks after Mr. Starks refused to accept it?

Ans. I lived on the land until the fall of '61, from about the time I filed on it in Mr. Stark's name.

Ques. Did you consider the claim your own, and hold it for your own use and benefit during the time you so occupied it and during the time that it was covered by the filing in Mr. Stark's name?

227 Ans. I lived on it and farmed a piece of land that was broken for my own use and benefit, and was not for Stark's benefit, for he never pretended to have any claim upon it.

Ques. Did Mr. Starks, after you had informed him of the filing made in his name, so made by you, and after he had refused to accept the land under the filing, ever take any steps to have the said filing cancelled at the land office at Omaha?

Ans. I do not know that he did.

Ques. What was done at the land office at Omaha with the filing in Mr. Stark's name when you filed on it in your own name in the spring of '61?

Ans. That had run out. I think I offered to file on the piece and there was no objection made.

Ques. When and with whom and for how long a time did Mr. Starks live at Logan Creek or in vicinity?

Ans. He lived on Logan Creek about a year. He lived in the house with Mr. Reese on Reese' claim.

Ques. Where was Mr. Reese's claim situated with reference to the mill site described in paper marked Ex. E?

Ans. It was north; the piece of land joined. The house was about 50 or 60 rods distant.

Ques. How long were you in building the dam spoken of and the
228 land described in Ex. E, and did Mr. Starks and Mr. Reese work for you the whole time it was building?

Ans. Commencing in July, 1860, finished in Dec. following. Mr. Starks and Mr. Reese did not work the whole time. I think they worked more than half the time; that is, viz, they worked by the day; some days they worked and some days they did not.

Ques. When and upon what tract of land did you make your 4th filing spoken of?

Ans. If I made a 4th filing it was upon the land south ½ of NE. ¼, the south ½ of the NW. ¼, sec. 10, T. 19, R. 8 E. I made the filing in August, 1860.

Ques. Are you positive that you yourself made any filing on the last mentioned tract?

Ans. I believe I did. I am not positive.

Ques. Do you know that Mr. Starks did not make a pre-emption filing on that last mentioned tract of land?

Ans. I don't know. He never did with my name as a witness; I mean my signature.

Ques. Do you know that Mr. Starks did not make a pre-emption filing on that last mentioned tract of land at any time?

Ans. I don't know.

Ques. Might not Mr. Starks have made the filing, marked Ex. E., upon the land therein described, and wrote your name as a witness, or had it written without your knowledge or consent, as easily as you used
229 his as a principal on the other filing, without his knowledge or consent?

Ans. No, sir.

Ques. Are you positive whether or not Mr. Starks or Mr. Reese filed in the summer of 1860, or at any time, when either of them lived in that vicinity, upon said last mentioned tract of land, the same as described in Ex. E.

(Objected to, as immaterial whether Reese filed on the land or not.)

Ans. I am not positive.

Ques. What was the value at that time of the dam and improvements which you say you put upon this last mentioned tract of land in the year 1860?

Ans. It cost in labor and in money paid for labor about $200. There are no other improvements on the tract except the dam.

Ques. Was that mill site considered valuable at that time?

Ans. It was a good place for a mill, but I do not think I could have sold it for anything without the improvements.

Ques. Did you intend to build a mill there when you made the dam?

Ans. I did.

Ques. You may state under what title you claimed this land at that time; that is, the time you built the dam, and under what title did
230 you expect to hold and control the same after you had built the mill?

Ans. I did not consider that there was any title to it at the time I built the dam. I filed on it to let people know that it was being

improved. Any one could have got it. Up to the time I sold it I expected to enter it.

Ques. In whose name do you think you filed on this land?

Ans. In Mr. Stark's name.

Ques. Why do you think you made the filing in Stark's name?

Ans. From the certified Ex. E.

Ques. If you filed on it in Mr. Stark's name was he knowing to the fact of such filing at the time it was made, and did he allow you to use his name for that purpose?

Ans. He could not have known it because he was not with me at Omaha, and I have no recollection of ever telling him of it. He did not allow me to use his name for that purpose that I know of.

Ques. How long did you contemplate making this filing in Mr. Stark's name before you did make it?

Ans. I did not contemplate entering it for any length of time. I went to Omaha to enter 40 acres containing the mill site.

Ques. Did Mr. Stark, at any time after said filing was made, know that you had made the filing in his name?

231 Ans. Not that I know of.

Ques. During the time Stark worked for you upon the dam, was the matter never talked of between you?

Ans. Not that I know. I have no recollection of anything of the kind.

Ques. Do you mean to say that Mr. Starks never knew by what title you claimed to hold this tract of land?

Ans. I do not know that he knew anything about it.

Ques. Did Reese know by what title you claimed this land?

Ans. Not that I knew of.

Ques. When do you say you sold this claim to Harvey Robinson?

Ans. In June, 1861.

Ques. What papers did you surrender to him upon that sale?

Ans. I have no recollection of any.

Ques. Was he not to pay you for the same in lumber or part in lumber?

Ans. No, sir; in the 1st bargain there was nothing said about lumber; afterwards he was to do an amount of sawing for me, which he never did.

Ques. You say that Mr. Stark objected to your filing in his name in March, 1860, because he could not take the land and pay for and would loose his pre-emption right. Now I ask you *have* you ca*use* to file a second time without his consent, as you say, in August, 1860?

232 Ans. I can't tell you why I used his name.

Ques. Will you swear that Mr. Stark did not know before the filing was made in Aug., 1860, that you were intending to make such filing in Mr. Stark's name, and will you swear that he did not know when you made the filing in his name, but it was made in his name; and will you swear that he never knew that the filing had been made in his name?

Ans. I swear that Mr. Stark did not know that I intended to file it in his name. He did not know that I made the filing in his name. I do not recollect that he ever knew that the filing had been made in his name. I was not positive that there was any filing on it until I saw the Exhibit E.

Adjourned till after dinner.

Resumed.

Ques. If you had made the filing shown here as Exhibit E in Aug., 1860, in Mr. Stark's name, would you have known it at the time it was made?

Ans. Yes, sir.

Ques. Are you a son-in-law of Mr. Starks, and how long have you been a son-in-law?

Ans. I am; about 18 years.

Ques. Were you in the habit of exchanging visits with the family of Starks and Reese while they lived at Logan Creek?

Ans. I was in the habit of doing so.

233 Ques. How long did Starks live with Reese at Logan Creek?

Ans. From March, 1860, to March, 1861; about the 1st, I think.

Ques. You have stated that when you went to Omaha in Aug., 1860, that your wife and Mrs. Reese accompanied you; state if they, or either of them, knew of your having filed on the tract described in the Ex. E in Mr. Stark's name.

Ans. They did not go to the office with me, I think, and did not know unless I told them.

Ques. Would you have been likely to have made such a filing when you had intended to enter 40 acres of the same land, and not told them, or either of them, at the time?

A. No, sir; I would not have been likely to.

Ques. Did you have any object in not telling that you had made such a filing?

Ans. My only object was that I expected to pay for the land in less than two months.

Ques. Was there any reason why you did not wish the families of Stark and Reese to know of the filing?

Ans. I don't know as there was any particular, except that I did not care to have every one know it.

Ques. Did Robinson know in whose name the filing on that

234 mill property stood when he proposed to buy you out?

Ans. I don't know whether he did or not. I don't know that he knew anything about it.

Ques. Did he know, when he bought you out, in June, 1861, as you say, that the filing was in Mr. Stark's name?

Ans. I don't think there was anything said about the filing. I gave him no papers that I recollect of.

Ques. You say that the sale of the mill property was made to Robinson at Mr. Starks' house. State if Mr. Starks was present at the time.

Ans. Not that I recollect of.

Ques. Were you a poor man at that time?

Ans. Yes, sir; I was.

Ques. Had Mr. Starks used his pre-emption right previous to his removal to Logan Creek, in 1860?

(Objected to, for the reason that the witness is asked to state a conclusion of law.)

Ans. Not that I know of.

Ques. Had Mr. Stark ever filed upon a tract under the U. S. pre-emption laws previous to 1860?

Ans. Not that ever I knew of.

Ques. Who signed the name of Francis G. Stark to the pre-emption filing made in March, 1860?

Ans. I signed that myself.

235 Ques. Did you sign it in the presence of Mr. Starks or by his order or direction?

Ans. No, sir.

Ques. Did you make the mark of the cross, as shown by Ex. C to have been made on the original? If not, who did?

Ans. I did not, I am pretty sure, and I don't know who did.

Ques. Do you know that Mr. Starks did not make the cross? And is not that his usual way of making a signature?

Ans. He did not make the mark previous to the filing or at the time of the filing. He signs by means of a cross.

Ques. Did you, then, actually sign your name as a witness that Francis G. Starks signed the declaratory statement in March, 1860, as shown by Ex. C, when in fact you say he did not sign it?

Ans. Don't recollect as signing as a witness.

Ques. If your name is so signed to said declaratory statement as a witness, did you sign it?

Ans. I suppose I did.

Ques. If you so signed as a witness that Mr. Starks so signed that d. s., was such attest'ion true or false?

Ans. Mr. Starks did not sign it.

Ques. When you signed as a witness did you know that Mr. Stark did not sign as a principal?

Ans. He did not know anything about this filing when it was made.

236 Ques. Who signed the name of Francis G. Stark to the pre-emption filing made in Aug., 1860, as shown by Ex. E?

Ans. I don't know; I am not positive.

Ques. Who signed the name of Geo. A. Newman as a witness to Mr. Stark's signature to said d. s., as shown by Ex. E?

Ans. I am not positive. I believe I made that filing in Aug.

Ques. If you made this filing, as shown by Ex. E, why did you not file in your own name?

Ans. I can't tell you what the reason was.

Ques. Did you not expect that he (Stark) would take the land?

Ans. No; I did not expect he would take it at that time.

Ques. Where did Harvey J. Robinson live while you were acquainted with him?

Ans. He lived part of the time with Reese and all of the time on section No. 10.

Ques. When did Robinson 1st propose to purchase the mill property?

Ans. The first time he proposed to me was at the time I sold it to him; that is in June, 1861.

Ques. Was there any proposition of partnership made between you and Robinson?

Ans. None that I recollect of.

Ques. Do you know whether or not Mr. Robinson proposed to start to buy this mill prop'. I mean the land described in Ex. E?

Ans. No' that I know of.

237 Ques. When did Mr. Robinson first come to Logan Creek to live?

Ans. It was soon after I sold the mill privilege. I think he came in July, 1861.

Ques. Were you acquainted with before he came, and had he ever lived there before?

Ans. I was not much acquainted before he came. He had never lived there before.

GEO. A. NEWMAN.

Subscribed and sworn to this the 27th day of Sept., 1872, before me.

MARY JANE NEWMAN, being duly sworn, testifies as follows:

Ques. State what relation you are to Francis G. Stark.

Ans. I am his daughter.

Ques. State what relation you are to Geo. Newman.

Ans. I am his wife.

Ques. State if you went to Omaha with your husband in Aug., 1860, to enter the land in which the mill site is located at Logan Creek; and, if so, did he enter said land, or make any other disposition of it?

Ans. I went with him at that time. He told me he did not enter it. He filed on it.

Ques. State in whose name he filed on it, if he told you.

238 Ans. He did not tell me in whose name he filed in, if I remember.

Ques. State if your father ever settled upon or improved the land upon which the mill site is located, and if so, what improvements he made.

Ans. He never settled upon it or made any improvements to my knowledge.

Ques. State if you know of his ever having claimed it as his.

Ans. He never did.

Ques. Do you know of his ever having offered to sell that tract of land; if so, when & to whom?

Ans. No, I do not know.

Ques. State if you know where your father was when your husband made a filing on that tract of land upon which the mill site was located?

Ans. He was at what was then his home—at my brother-in-law's—Mr. Reese's place.

Ques. State if you know anything of a filing made in Mr. Stark's name upon the land upon which you resided NE. ¼ 9, 19, 8; if so, state what you know in relation thereto.

Ans. My husband filed on the place where we then lived, in my father's name.

Ques. State what, if any improvements your father made on that tract where you then lived.

Ans. My father made no improvements.

Ques. You may state where the tract of land was that your fa-

239 ther desired to get, and if he ever secured any claim on it.

Ans. It lays rather northeast from the place which Reese filed on; he never got it and never made any improvements on it, because he went to Mr. Gaylord's to live?

Ques. Do you know of his ever making any attempts to make an exchange with Mr. Reese for part of his place?

Ans. I think there was some ta'ke about it.

Ques. If Reese had agreed to the exchange would your father then filed on the place north?

Ans. He would have filed on it; that was the talk.

Ques. Would Reese agree to the exchange?

Ans. He would not.

Ques. Do you know of his filing, that is, Mr. Starks, or claiming other than what you have here stated any piece of land except the piece upon which he now lives?

Ans. He never has to my knowledge.

Ques. What are your opportunities to know?

Ans. I lived near him all time, except one year.

Ques. Have you been ?

Ans. Yes.

Ques. What year was that?

Ans. It was in the year '62 or '63, I think.

240 Ques. Are you acquainted with Mr. Harvey J. Robinson in the neighborhood in which he lives, and about how long did you know him?

Ans. Yes; I am acquainted with Mr. Robinson; I knew him about 4½ years.

Ques. What was his reputation in the neighborhood in which he lived for truth and veracity?

Ans. It was not very good.

Adjourned till 7 o'clock this evening.

Cross-examination:

Ques. Was Mrs. Reese with you when you and your husband went to Omaha to enter this land?

Ans. Yes; she was.

Ques. Did you know at the time what your husband went to Omaha for?

Ans. He went to enter this land and do some trading.

Ques. How much land did he go there to enter?

Ans. 40 acres, I think.

Ques. Did he tell you whether or not he had entered the 40 acres?

Ans. He did; he filed on it.

Ques. How much did he say he had filed on it?

Ans. He did not say.

Ques. Do you say he did not tell you in whose name he filed on this land, and did he ever tell you or talk about in whose name the filing was made?

Ans. No, not as I remember.

241 Ques. On whose land were you living at this time, and how far was it from the mill site property?

Ans. We were living on our own place; the land was about a mile, the house about a mile and a half from the mill site.

Ques. In whose name did you suppose he had filed on the mill property?

Ans. I thought nothing about it; in his own name, if anybodie's.

Ques. State how you know that your father was at home when you went to Omaha in Aug. 1860.

Ans. Because he was at home cutting hay on Mr. Reese's place.

Ques. Did Mr. Starks know for what purpose your husband went to Omaha on that day?

Ans. I suppose he knew we were going to enter the land.

Ques. Did you stop at Mr. Starks' house, or see him immediately on your return?

Ans. Yes, I did; we stopped at the house as we came back.

Ques. What was said about your husband entering the land?

Ans. I do not think there was anything said. I do not remember of anything.

Ques. Was anything said at that time or any other time about your husband having filed on that mill site instead of entering it?

242 Ans. I do not remember of anything being said at the house. My husband said at Omaha that he filed upon it.

Ques. Did he say in the presence of Mrs. Reese that he filed on it?

Ans. We were in a store doing trading; he told me so; she was near; I do not know whether she heard it or not.

Ques. In whose store was this?

Ans. McGath Bros., of Omaha.

Ques. When was it your father talked of pre-empting this piece north of Reese's?

Ans. I think in the summer of 1861.

Ques. Was it not in '62 that your father talked of pre-empting this land and exchanging with Reese, instead of '61?

Ans. No, I think not; it was the summer of '61.

Ques. Did your father ever file on that piece that he talked of exchanging with Reese?

Ans. No, sir; he did not.

Ques. When was it that you were acquainted with Mr. Robinson?

Ans. In '61 and '62.

Ques. What were your means of knowing what his reputation was in the neighborhood?

Ans. I knew because I lived in the same neighborhood, and lived neighbor to him.

Ques. Did you ever hear the neighbors talk about him?

Ans. Yes.

Ques. Have you known anything about Mr. Robinson since the year 1862?

Ans. No; not very much; I have heard through others about him.

243 Ques. Has Mr. Newman or Mr. Reese known anything of him since they came away from Logan Creek?

Ans. I do not know as they do. I suppose Mr. Newman knows through the same means that I do. I do not know anything about Mr. Reese.

Ques. Have any of you been back in his neighborhood since you moved away?

Ans. Mr. Newman moved a family through; that was last summer; that is the only time I know of.

Ques. How long have you been in Lincoln on this trip?

Ans. I came here Tuesday of this week.

Ques. Have any of the attorneys in this case, your father or husband, or Mr. Reese, or any other person or persons, said anything to you since you came here as to what you should testify in this case?

Ans. Yes; we talked it over as to what I knew about it.

Ques. Did they or any of them tell you what they wanted you to swear to?

Ans. No, sir.

Ques. When did you first know you was to be a witness in this case?

Ans. Ever since the first of the case.

Ques. Who first spoke to you about it?

Ans. I do not think I could tell.

Ques. Who do you think it was?

Ans. I do not know, but I think I talked the matter over with my mother first.

Ques. What and when was that conversation?

244 Ans. I can't tell.

Ques. About how long?

Ans. It was much as 2 years ago.

Ques. Did you ever about the time or before the commencement of this trial in July, '72, have any conversation with your father about this matter in relation to your being a witness?

Ans. Yes.

Ques. What was that conversation?

Ans. It was whether he had ever had any pre-emption besides this one.

Ques. What did he say about it?

Ans. He said he had not.

Ques. Did you understand at that time that you were to testify upon this trial to what you have this day sworn to?

Ans. I knew that I could be a witness that he had never had any other pre-emption.

Ques. Did you then also understand that the question of his having a former pre-emption filing would arise in this case?

Ans. No, sir.

Ques. Then, if I understand you, at that time you did not know that you would be called upon to testify to what you have testified to-day?

Ans. No, I did not.

Redirect examination.

Ques. Have you anything by which you can fix the date in Aug., 1860, when you and your husband went to Omaha to enter

245 this 40 acres of land on which the mill site is located? If so you can state it.

Ans. I went and saw a cousin, a lawyer, in Omaha, and I remember it because my little girl, 15 months old, could talk so plain.

Ques. State what her age is now.

Ans. 13 years old in May last.

MARY JANE NEWMAN.

Sworn to and subscribed this 27th day of Sept., 1872, before me.

Adjourned till 10 o'clock to-morrow morning, after which Mr. Newman wishes to make a correction in his testimony as to dates, it is as follows:

After the testimony of Mrs. Newman, Mr. Newman desired to correct his statement as to dates, that is to say that I left Logan Creek in the fall of '62, instead of '61, as I stated in my testimony.

GEO. A. NEWMAN.

Then adjourned till to-morrow morning, Sept. 28th, at 10 o'clock.

Case resumed.

CAROLINE STARKS, being duly sworn, testifies as follows:

I am the wife of Francis G. Starks, the claimant of the land in contest.

246 Ques. State if you ever lived on Logan Creek, Dodge Co., Neb.; and if so, when and about how long?

Ans. I went there in March, '60, and lived there about a year.

Ques. You may state what, if any, land your husband claimed while there; and if any, by what right he claimed it.

Ans. He did not claim any that I ever knew of.

Ques. With whom did you live while in vicinity of Logan Creek?

Ans. I lived in one part of my daughter's house.

Ques. State if your husband settled on or improved any of the gov. lands in that vicinity while you were there; and if so, state what land it was.

Ans. He did not live on any lands or never improved any.

Ques. You may state if you have charge of your husband's papers; if so, how long and why.

Ans. Yes, I have had charge of them always, because he could not write himself. I generally transacted the business done in writing.

(Witness was here shown filing certificate marked Ex. G.)

Ques. Have you ever seen this paper before; if so, when and where?

*Ans.* (The witness not having her specks with her could not see
247 to read the certificate, and consequently could not tell upon the certificate being read to her ans.)

Ans. No such paper was ever in our possession.

Ques. State if your husband while there ever talked of filing or claiming any of the public lands; and if so, in what direction did the tract lay from Mr. Reese's claim?

Ans. He talked of taking some north of Reese's and adjoining it.

Ques. State if your husband ever claimed any interest in or right to the land known as the mill property.

Ans. No, he never did.

Ques. State if your husband ever claimed any interest in or right to the tract of land upon which Mr. Newman resided while you lived in vicinity of Logan Creek.

Ans. No, he never did; he had nothing to do with it.

Ques. State if you have ever heard any conversation between Mr. Starks, your husband, and Mr. Harvey G. Robinson in reference to the sale of the mill property; if so, state what that conversation was.

Ans. I never heard any talk at all about it.

Cross-examination:

Ques. With whom did you reside when you first went to Logan Creek, in March, 1860?

Ans. With the Reese's family, in one part of the house.

Ques. Did you or your husband or either of you live at all with
248 Mr. Geo. A. Newman when you first went to Logan Creek, in March, 1860?

Ans. They, that is, Mr. & Mrs. Newman, were with us in Mr. Reese's house a few days before they got in their own place.

Ques. What title did Mr. Newman have to his place when he first took it?

Ans. He had a filing, of course.

Ques. In whose name was the filing?

Ans. He filed in my husband's name.

Ques. Did you and your husband know at the time that the filing was in your husband's name?

Ans. No, sir, we did not know it.

Ques. How then do you know that the filing was made in your husband's name?

Ans. Mr. Newman told us that he had filed in his name when he came back.

Ques. How long did Mr. Newman hold this land under the filing made in your husband's name?

Ans. I do not know.

Ques. Did your husband ever take any steps after he knew of this filing, to have the same cancelled at the *loan* office?

Ans. I do not know that he did.

Ques. How do you know, by simply hearing it read, that the paper on file here, marked Ex. G, was ever in the possession of your husband, when such a long time has elapsed since it was issued?

249 Ans. My memory is that we never had such papers.

Ques. Did not Mr. Newman sometimes transact business for your husband and keep some of his papers?

Ans. No; he never had anything to do with his papers.

Ques. You state that you generally transacted your husband's business done in writing. Now I want to ask you if you transacted all such business and did all such writing?

Ans. Of course I did. There was none else there at hand to do it.

Ques. Who did his writing when he was not at home?

Ans. That is more than I can tell.

Ques. Did not other people do writing for him when away from home, that you never saw?

Ans. That I cannot tell.

Ques. Do you know whether or not Mr. Newman ever did any writing for him?

Ans. That I know of. I do not remember of his doing any. It is possible Mr. Newman may have done writing for him when away from home, but I knew nothing of it.

Ques. Did you know while you were at Mr. Reese's house in 1860, who claimed a title at any time during that year to the mill property;
250 if so, who claimed it and under what title?

Ans. I don't know of any one, unless Mr. Reese; I do not know under what title he claimed the land, I suppose, and the mill property with it. I did not understand the question; there was no one ever had it but Mr. Newman; he claimed it, and sold it. I do not know under what title he claimed it; I never asked any questions.

Ques. Will you solemnly swear that you did not know that Mr. Newman had a filing on this mill-site land, either in his own name or in the name of some other person?

Ans. Yes; I will solemnly swear to it.

Ques. Did not Mr. Newman claim a piece of land and live on it as his own, at the time he claimed the mill site, other than the mill site?

Ans. Yes, sir.

Ques. Were your family and Mr. Newman's family on good terms and in the habit of visiting each other?

Ans. Yes, sir.

Ques. He is your son-in-law, and was at time, was he not?

Ans. Yes, sir.

Ques. Did you ever hear any one say during the time you lived at Logan Creek by what title Mr. Newman claimed this mill site?

Ans. No, sir; I did not.

251 Ques. Was the dam built upon it while you were there?

Ans. No, sir; it was not all done; they commenced it while I was there.

Ques. Do you swear that your own son-in-law, Mr. Newman, who was on terms of intimacy with you and your family, and who you knew at the time owned a claim or another piece of land while these improvements were being made on the mill-site property, never told you or your husband, or spoke about it in the hearing of either of you as to what title he had on the mill-site property?

Ans. He never said anything that I heard, I swear to that.

Ques. When your family and Newman were together, were you in the habit of talking over family affairs, as families do generally?

Ans. Of course we did.

Adjourned till 1 o'clock for dinner.

Cross-examination:

Ques. After your husband moved to the Gaylord place, did he file on any land, or talk of filing?

Ans. No; he did not.

Ques. Did you ever hear your husband say anything to you, or in your presence, as to how Mr. Newman held the mill-site prop'?

252 Ans. No, sir; I did not.

Ques. Did you know at the time that Mr. Newman, with Mrs. Newman and Mrs. Reese, went to Omaha in Aug., 1860; that he intended to enter the 40 acres upon which the mill site is situated?

Ans. No, I did not; I never heard him say anything about it.

Ques. Did you never hear anything said about it by any one?

Ans. No; I never did hear anything.

Ques. Do you remember of his going there with Mrs. Newman and Mrs. Reese?

Ans. Yes; I do remember it.

Ques. What did he go there for?

Ans. I do not know.

Ques. State if you know of your husband and Mr. Robinson ever having had any conversation during the time you lived on the Logan or at Gaylord's place.

Ans. I do not recollect of any time.

Ques. Might there not have been a good many conversations between your husband and Mr. Robinson and you know nothing of them?

Ans. I do not know as to that; I can't tell.

Ques. When did you first expect to be called as a witness in this case?

Ans. I did not know anything about it till last night.

Ques. Who, if any one, has been talking to you in regard to what your testimony would be in this case?

253 Ans. There hasn't any one.

Ques. Have you had any conversation with any one before you were called to the witness stand to-day as to what your testimony would be in this case?

Ans. No; I have not.

Ques. Did any one, previous to your appearing here as a witness to-day, say anything to you to refresh your memory in regard to the circumstance as you told them to-day?

Ans. No, sir. As soon as they told me what they wanted, I remembered them myself.

CAROLINE J. STARKS.

Sworn to and subscribed this 28th day of September, 1872, before me

Adjourned until 9 o'clock Monday morning, Sept. 30th, 1872.

Sept. 30th, 1872; taking of evidence resumed.

WILLIAM MCCLENTIC, being recalled, testifies as follows:

Ques. How long have you been acquainted with Francis G. Stark, and how far have you resided from him during that time?

Ans. I have known him 6 years and over; a little over a ½ a mile
254 from him for over 4 years.

Ques. State if you are a minister of the Gospel and own a farm on the same sec. on which you reside.

Ans. I am. I own a farm on the same section where I reside.

Ques. State if you are acquainted with Mr. Starks' reputation for truth and veracity in the neighborhood where he resides, and what that reputation is.

Ans. I am acquainted with his reputation. I have had some deal' with Mr. Starks. I think Mr. Starks is like a great many other men; his means have been limited, and he could not always meet his obligations as he would like to. I have no reason to doubt Mr. Starks under oath; I have seen nothing to cause me to doubt his statements under oath. Mr. Starks, as far as I know, has been a peaceable man in the neighborhood. I think there has been a great many things said against him in the neighborhood that had no foundation.

Cross-examination:

Ques. What kind of deal' have you had with Mr. Starks?

Ans. I have had various kind'; principally provisions he has bought of me—grain, pork, flour, etc.

Ques. Is your opinion of Mr. Starks' reputation for truth and
255 veracity, as you have before stated, based upon the dealings you have had with him?

Ans. It is based upon the dealings I have had with him and what I have seen myself.

Ques. If I understand you, then, Mr. McClenic, your opinion of Mr. Starks' reputation for truth & veracity is not based upon what the people in the neighborhood say of him, but simply upon what you yourself have seen of him?

Ans. I wish to be so understood.

Ques. Have you had, during your acquain'ance with Mr. Stark, any great amount of intercourse with him?

Ans. Not as much as some of my neighbors.

Ques. You have stated that there has been a great deal said in the neighborhood against Mr. Starks that you thought had no foundation; state, now, what is his reputation in the neighborhood.

Ans. I believe the opinion of the leading men in the neighborhood—that is, the general opinion is that he has not always met his obligations as he agreed to, and the reason why he did not do so was his want of means.

(Adjourned till 1 o'clock for dinner.)

Resumed.

Ques. Are there not quite a good many of the neighbors who regard Mr. Starks' reputation as not very good?

256 Ans. That is a question that it is pretty hard for me to answer. I don't think that you can find but a few but have something of the same opinion that I have.

Ques. Did you not have a conversation with Mr. Van Pelt on the State fair ground a few weeks since, in which you said in reply to a remark of Mr. Van Pelt's that the greatest trouble with Mr. Starks was that he did not tell the truth at all times, or words to that effect?

Ans. I had a conversation with Mr. Van Pelt; Mr. Van Pelt came to me and wanted to know of me whether Starks had ever told me that he had made a filing on a piece of land before; I told him that he always told me that he had never made any filing; he told me that Reese had a piece of land, and the reply of Mr. Van Pelt was that it was Starks' instead of Reese', and that he was going to prove or show that that was the case. He, Mr. Van Pelt, said something to the effect that Starks' word was not good for anything; I don't remember the answer, but I might have said something to that effect; the substance was that if he had made a filing and denied it, it was wrong. It might be that I said that it might be a failing with Mr. Starks.

257 Ques. Will you swear positively that you did not say that untruthfulness was a fault of Mr. Starks' or words to that effect?

Ans. I will swear to nothing more except what I have sworn to—that covers it all.

Ques. Will you swear positively that you have never at any time said to Mr. Van Pelt or any other person that Mr. Starks was not all times a truthful man, or words to that effect?

(Objected to on the grounds that it does not state time or place or person with whom such conversation was had, improper, impertinent, and insulting.)

Ans. I presume that I have said it to men who came to me with grievances against Mr. Starks. I think there was one man in particular who was not living here; now my explanation is that what I said was based upon the representations of the parties who came to me.

WM. McCLINTIC.

Subscribed and sworn to this the 30th day of September, 1872, before me.

JAMES YOUNG, being duly sworn, testifies as follows:

258 I have known Mr. Francis G. Stark since some time in 1865. I lived for 2 years about 2 miles from him, part of the remainder of the time he was away and a portion I was away, part of the time ½ a mile further away, and the last year 3 miles further away from him.

Ques. State what Mr. Starks' reputation for truth and veracity has been during your acquaintance with him.

Ans. Good, as far as I know.

Cross-examination:

Ques. Were you ever much acquainted with Mr. Stark, and on familiar terms with him?

Ans. Yes, sir.

Ques. You say Mr. Starks' reputation is good as far as you know. Now, state if you ever heard anything to the contrary among the neighbors.

Ans. No, sir.

Ques. How far do you now reside from Mr. Starks, and how long have you lived there?

Ans. I should call it about 5 miles to Mr. Starks' place. I have been there a little over a year.

JAMES O. YOUNG.

Subscribed and sworn to before me this the 30th day of September, 1872, before me.

259 WILLIAM J. HYATT, being duly sworn, testifies as follows:

I am acquainted with him; have been acquainted with him in the neighborhood of 2 years. I reside about 2 miles from him.

Ques. State what reputation Mr. Starks has borne for truth and veracity during your acquaintance with him.

Ans. I have had dealings with him and bought things of him; loaned him money, or rather paid him in advance 2 or 3 times for hay; he always lived up to his contracts with me; as far as anything outside I never heard much one way or the other.

Cross-examination:

Ques. Mr. Hyatt, do you reside in the city of Lincoln, and have you during these 2 years?

Ans. I do and I have.

Ques. Then, if I understand you, your opinion of Mr. Starks is based

upon your own transactions with him, and not upon what his reputation may be among his neighbors?

Ans. I could not say what his reputation is among his neighbors. My opinion is based upon my own transactions with him.

260 Redirect ex.:

Ques. Are you acquainted with Mr. Starks' neighbors?

Ans. I am acquainted with Mr. Culver, Mr. McClintic, Mr. Harris, those who live near him.

W. J. HYATT.

Sworn to and subscribed to before me the 30th day of September, 1872.

PHILETUS PECK, being recalled, testifies as follows:

I am acquainted with Francis G. Starks; have known him about 4 years; I have resided about 2½ miles from him.

Ques. State what general reputation has been in the neighborhood for truth and veracity during the time you have known him.

Ans. It is good as far as I know.

Ques. State if you are conducting a farm near him, and are well acquainted with him and his neighbors.

Ans. I do run a farm near him; am well acquainted with him and his neighbors; he has worked for me and I have had some dealings with him.

Cross-examination:

Ques. How much of this 4 years spoken of have you resided in the city of Lincoln?

261 Ans. Pretty much all the time. I think all the time.

Ques. Is your opinion of Mr. Starks based upon your own dealings with him?

Ans. Yes; partly.

Ques. Did you ever say to one Mr. Esterbrook that you considered Mr. Starks an unreliable man, or used words of similar import?

(Objected to for the reason it does not state the time or place where such conversation took place.)

Ans. I never did, as I remember of.

Ques. Have you, during the time you have been acquainted with Mr. Stark, ever heard many bad reports about him with regard to his truth and veracity from any of his neighbors?

Ans. I have heard some; I have heard some about his neighbors, too; I have heard some I never believed.

PHILETUS PECK.

Subscribed and sworn to before me this the 30th day of September, 1872.

Adjourned till 9 o'clock, Oct. first.

Examination resumed:

FRANCIS G. STARK, being recalled, testifies as follows:

262 Ques. State, Mr. Starks, if you did, by yourself or Mr. Geo. A.

Newman or any other persons, file upon the piece of land as shown in Exhibit C.

Ans. No, sir; I knew nothing of it until he came home and told me himself.

Ques. What did he tell you?

Ans. He told me he had filed on it without my knowing anything about it or my consent. I told him, in the first place, that he had no right to do it. He said I might then have the place if I wanted it. I then said I was not able to pay for it. I had no team, and was not able to pay for it, and would not have it; that I would not loose my pre-emption right.

Ques. Do you know anything about the filing on this mill prop' in Aug., 1860, as shown in Ex. E? If so, state particulars.

Ans. I never knew anything about it; never knew there was one till presented at this trial here.

Ques. Did you ever by yourself, or Geo. A. Newman, or any other person whatever, file upon this mill prop', as shown in Ex. E?

Ans. I never did.

Ques. Did you ever, Mr. Starks, offer to sell or bargain to sell your claim which is now in dispute, or any part thereof, to Mr. Chapin, or to any other person whomsoever?

Ans. No, sir; I never did.

263 Ques. Were you present at the time this mill property, as shown in Ex. E, was sold to Mrs. Robinson?

Ans. No, sir.

Ques. What do you know about the sale of this mill prop' to Robinson?

Ans. I don't know anything about it.

Ques. State whether you have ever had any conversation with H. J. Robinson in regard to the sale of this claim, as shown in Ex. E. If so, state what it was.

Ans. No, sir; I never had any conversation with him about it, for I did not know him till after he had bought it.

Cross-examination:

Ques. Did not Geo. A. Newman and family live in the same house with you at the time the filing was made, as shown in Ex. C?

Ans. It was a double log house. I lived in one part, and Newman and family in other part for a few days; don't know if it was the time or not.

Ques. At what time did you go to Logan Creek?

Ans. I think it was the first of March, 1860.

Ques. How long after this filing did Newman move on the land?

Ans. I could not tell exactly; it was but a short time.

Ques. Did you ever take any steps to have this filing made by

264 Newman in your name, as you say, and without your consent, cancelled at the proper land office?

Ans. No, sir; I never went to the land office. I did not know it was necessary.

Ques. When did Mr. Geo. A. Newman file on this land in his own name?

Ans. I don't know; only what he told me. He told me that he had filed, but not when, and that would kill the filing in my name.

Ques. When did he tell you this?

Ans. I can't tell exactly. I should judge 4 or 5 months afterwards.

Ques. Did Newman make his home upon the land from the time the filing was made in your name?

Ans. He did.

Ques. Where were you when you say Newman filed upon the land in your name?

Ans. He told me he filed on Tuesday; if so, I was at Reese's house, on the Logan.

Ques. Did you know that Geo. A. Newman had had a previous filing; I mean previous to that time near Cuming City?

Ans. I have no recollection of it; think he told me nothing about it.

Ques. How far was the house in which you lived from the mill site upon which the dam was built?

Ans. I should think it was between ½ and ¼ of a mile.

265 Ques. Did you know of Mr. Newman and wife and Mrs. Reese going to Omaha in Aug., 1860, and, if so, for what purpose did they go?

Ans. I knew they went, but for what purpose I do not know.

Ques. Do you know under what title the mill site was held at the time the dam and improvements were made?

Ans. I do not know nothing about it?

Ques. Did you help build the dam?

Ans. A very little of it. I worked by the day.

Ques. Did you ever hear any talk of Newman entering the 40 acres of the mill site at private entry?

Ans. No, sir.

Ques. Were you and your family and Mr. Newman and family on friendly terms at this time, and in the habit of visiting each other and talking over family matters?

Ans. I don't know anything to the contrary. I presume they did.

Ques. Were you all poor at that time?

Ans. I was. About my son-in-law's affairs I never meddle with. I suppose they were.

Ques. Were you living in Mr. Reese's house, near the mill site, all the time that the dam was being built there?

Ans. No, sir; not all the time. I went in March, '60, and staid till the next March.

266 Ques. Do you solemnly swear that during the time you were there, and the time the dam was being built, that you never heard any one say under what claim that mill-site was held?

Ans. I never did.

Ques. Did you during that time ever ask Mr. Newman or Mr. Reese about that claim on the mill site, or say anything about it?

Ans. I never did but once.

Ques. When was that?

Ans. About the time he commenced the dam.

Ques. When was the dam commenced?

Ans. About the last of June or July, I should think.

Ques. What was said?

Ans. I asked him by what title he was holding it. He said that is nothing that concerned me or none of my business, I don't remember which.

Ques. Where was it that the mill property was sold to Mr. Robinson?
Ans. I do not know.
Ques. Is it not true that you are to give or pay some portion of the land in dispute to your attorneys, or some one of them, if they succeed in getting you a title to the same?
Ans. It is left to my option what I am to do; that is all I can say to you.

his
FRANCIS G. + STARKS.
mark.

Witness: E. K. ALDRICH.

267 Sworn to and subscribed before me this the first day of October, 1872.

Adjourned for dinner.

Resumed.

CAROLINE STARKS, being recalled, testified as follows:

Ques. State where you lived in spring, summer, and fall of 1860.
Ans. On Logan Creek.
Ques. Did you remain there all the time from March, '60, to March, '61?
Ans. Yes, just a year.
Ques. Of what did your family consist at that time?
Ans. My husband and myself.
Ques. You can state whether your husband was away from home during that time; and, if so, how long.
Ans. Don't know of his being away except over to Fremont, and gone 2 or 3 hours.
Ques. Was there any reason for his staying at home; if so, you can state it.
Ans. Yes, sir; Mr. Reese was away at work, and he remained at home on account of the Indians, & also had no business to call him from home.
Ques. Was he gone at any time long enough to go to Omaha?
Ans. No; he was not.
Ques. Where have you lived within the last year?
Ans. On the place where we are now, the land in dispute.
268 Ques. Are you acquainted with Mr. Van Pelt and family?
Ans. Know them by sight.
Ques. You can state if you know whether there has any family, besides your husband and yourself, lived on this place in dispute within the last 8 months; if so, state who they are.
(Objected to, for the reason that a copy of the records hereto attached, marked Ex. K, shows that about 8 months ago Mr. Van Pelt commuted his homestead on this land and paid for the same, and it is immaterial for the purposes of this suit whether he has resided on it since that time.)
Ans. No, sir; I think not, except Mr. Reese's family.
Ques. Is Mr. Van Pelt's house on this land within such a distance that you can see from one to the other?
Ans. Yes; it is.

Cross-examination:

Ques. How old are you, Mrs. Stark?

Ans. 62 years.

Ques. How do you come to remember so clearly, after nearly 12 years have elapsed, that your husband never left home for more than 2 or 3 hours at a time 12 years ago?

Ans. He had no business to call him from home, and we were
269 afraid to stay at home on ac't of the Indians.

Ques. Was not Mr. Reese at home part of the time?

Of course. Mr. Newman lived *lived* a mile from us, across the Logan.

Ques. Did Mr. Reese make journeys away from home, or was he simply away to work during 1860?

Ans. Only to work.

Ques. You have stated that Mr. Starks had no claim upon the Logan in 1860. State by what means he supported his family during that year.

Ans. He worked for others. He made hay and worked on the dam.

Ques. Who, if any one, has been recalling these things to your mind since you were on the witness stand in this case 2 or 3 days ago?

Ans. There hasn't any one at all.

Ques. Have you talked over these matters you have just testified to with your husband, or any of his attorneys, since you were last on the witness stand?

Ans. No, sir; I have not.

Ques. Did you not, since you have been in this room to-day, have a conversation with one of Mr. Stark's attorneys, Mr. Palmer, relative to the testimony you should give here to-day?

Ans. No, sir; I have not.

Ques. How far is it from your house to Mr. Van Pelt's house, about?

270 Ans. I should think about a ½ mile.

Ques. Do you know whether or not a large portion of his goods are still there or not?

Ans. I do not.

Ques. Have you ever been to his house?

Ans. No, sir; I have not.

Ques. How do you know there has been no one living there?

Ans. We knew generally by the light. There is none now, and hasn't been.

CAROLINE STARKS.

Sworn to and subscribed this the first day of Oct., 1872.

STEWART MCCONIGA, being duly sworn, testifies as follows:

My name, Stewart McConiga; 44 years; reside in Lincoln; occupation, real estate agent.

Ques. Are you acquainted with Mr. Francis G. Starks and Mr. Van Pelt; and, if so, how long have you been?

Ans. I am acquainted with both; have known Starks about 9 years and Mr. Van Pelt about 3 years, I think.

Ques. What was your business in the spring & summer of '70?

Ans. I was then register in the U. S. land office at Lincoln.

Ques. Do you know the land in dispute between Mr. Starks and Mr Van Pelt?

271 Ans. I do.

Ques. You can state if on or about the middle of June, 1870, any person offered to file a pre-emption claim on this piece of land; and, if so, who it was, and what was done with it?

Ans. Stark applied to prove up or file about that time; I cannot tell which. His application, as near as I can remember, was rejected.

Ques. You can state if you are acquainted with Mr. Starks' reputation, in the neighborhood in which he lives, for truth and veracity, and whether it is good or bad.

Ans. I have heard nothing in the neighborhood that I would consider derogatory to his character at all for truth & veracity.

Adjourned till 9 o'clock, Oct. 2nd, 1872.

Examination resumed.

Ques. You have stated yesterday that in June, 1870, Mr. Starks made application to file or prove up—you did not know which; on reflection have you decided which, to file or prove up?

Ans. He made application to file upon the land a pre-emption claim; at the same time submitted proof of his settlement upon the land,

272 accompanied by an application to enter the same under the pre-emption law. My recollection is that both myself and the receiver recommended to the Commissioner of the General Land Office that his application and entry be allowed. The papers were sent to Washington.

Cross-examination:

Ques. Are you a member of the firm of McConiga & Chapin, real estate brokers and dealers in homestead and pre-emption claims in the city of Lincoln?

Ans. Yes.

Ques. When you were register of the Lincoln land office, as aforesaid, who made the entries in the records of the office as indicated as Ex. K?

Ans. The application 7799, made May 10th, '71, was made after the expiration of my term of office. Pre-emption declaration No. 7830, by Francis G. Starks, and in fact the whole exhibit, was made after I went out of office.

Ques. How do you remember after the lapse of nearly 2 years and a half that Mr. Starks made this application to pre-emption and to enter the land as you have stated at the time you state, or if there was an application made that it was Mr. Starks who made it?

Ans. I know Mr. Starks well; have known him for 8 or 9 years.

273 I know him to be a poor, weak old man, and at the time that he made his proof I considered it of such a character that I believed him entitled to the land, and I so recommended, as I stated before, that he might be allowed to enter the land. Since that time I learned that other parties had been trying to get the land away from him, believing unjustly; hence my memory in regard to the transaction.

Ques. Was not this land and quite a good deal more in this vicinity claimed by the B. & M. R. R. in Neb. at that time?

(Objected to, because there is better proof.)

Ans. I believe it was among the class of lands that were claimed by the R. R. at that time.

Ques. What action did you as such register take in the cases where the land was claimed by the R. R. as this was, where applications were made to file upon or homestead the same?

Ans. There was no case similar to this, as I remember, came before me for decision. Cases came before me touching the same class of lands where the claimants alleged recent settlement; in this case it was claimed by the party, Starks, and proved by a number of witnesses, that he had been living upon and cultivating the same for a number of years, either
274 under the homestead or pre-emption law. He claimed to have formerly held the land under the homestead law.

Ques. Why did not Mr. Starke still continue to claim the land under the homestead law?

(Objected to, as immaterial and irrelevant.)

Ans. Because the homestead law had been cancelled.

Ques. What was the reason of the cancellation, and when was such cancellation made?

(Objected to on same grounds as before.)

Ans. The records of the land office, as I remember, show a voluntary abandonment; when, I don't remember.

Ques. Is it not true that Mr. Starks sold his homestead claim to one J. S. Porter?

Ans. I know nothing whatever of the transaction.

Ques. After Mr. Starks had abandoned his homestead claim did not one J. S. Porter apply to homestead or pre-empt the same?

(Objected to becaus' the best evidence.)

Ans. He made no application as I remember of.

Ques. Do you not know as a matter of fact, in your office, while you were there, that an application had been made by Mr. Porter for this piece of land after Mr. Starks had abandoned it?

275 Ans. No man, neither Porter or any person else, made an application for that land under the homestead law while I was in the office, and under the pre-emption law, excepting Starks, that I can remember of. I don't know anything about Porter's application.

Ques. Were you register at the time Mr. Starks abandoned his homestead and the same was cancelled?

Ans. I know nothing about when he abandoned it or when it was cancelled; I think it was before I became register.

Ques. After you became register did not Mr. Starks return to this place and make some efforts to have the homestead he had abandoned on this piece of land reinstated?

Ans. I think he did.

Ques. Was not this attempt to have the homestead reinstated made at or about June, 1870?

Ans. It was made at least a year before the date you speak of; I think in the fall or winter of '68, to the best of my recollection.

Ques. Did Mr. Starks at the time he sought to have his homestead reinstated, or since that time, up to the present, to your knowledge, ever offer any person any portion of that land for getting him a title to the same?

Ans. Never directly, that I know of.

276 Ques. Did he ever indirectly make such offer; and if so, what was the offer?

Ans. He never did indirectly, that I remember of, further than this, that he expected to have to pay for services in procuring his rights on the land.

Ques. Has he ever agreed or proposed, either with or to yourself or Mr. Chapin or Mr. Palmer or anyone else, to give or pay to either or any of his counsel in this case, or to anyone for them, or either of them, any portion of said land in dispute for legal services or other services rendered to him in or about this case, or accept any proposal made to him that he should so pay part of the land?

Ans. As concerns any bargain or agreement made between Mr. Starks and Mr. Chapin I know nothing whatever; as an agreement between myself and Starks, none has ever been made. I will state all that I know of any agreement between Starks and the parties above referred to, which is this, and that is only hearsay: that Starks is to pay Judge Palmer $100 if he gains the case.

Ques. Do you know of Mr. Stark's ever proposing to any of the parties above referred to to give a portion of this land for services rendered in obtaining the title to the same in case said Stark should
277 obtain it, either in the present case or when Mr. Starks sought to have his homestead reinstated?

Ans. I know nothing of any proposals that he has ever made to any person who he has employed to render him service in this case at any time that I have known him, further than this, I——

Ques. You have stated that you have heard nothing in the neighborhood in which Mr. Starks lived that you would consider derogatory to his character. Now I ask you if you have unlimited confidence in Mr. Stark's character for truth and veracity, and have you always had confidence in him?

Ans. I would not have implicit confidence in Stark's promises to pay, as he has failed to pay me debts contracted for groceries, but I have attributed that failure to his inability and not for a want of a disposition to pay if he was able.

Ques. Did you not at or about the month , 1871, make the remarke to Mr. Van Pelt and Gen'l Funke, in Gen'l Funke's store, in the city of Lincoln, that if there was a man living that I take no stock in that man is O. W. Starks, or words to that effect, or that significant?

278 Ans. I do not at present remember of using any such language, though I may have said something of the kind.

Ques. If you did say so, or words to that effect, were they true?

Ans. I have often used such language towards men without any special signification; and, if used such language at that time it was used without special regard to the par value of friend Starks.

S. McCONIGA.

Sworn to and subscribed this, the 2nd day of Oct., 1872, before me.

Adjourned for dinner.

Resumed.

W. F. CHAPIN, being duly sworn, testifies as follows:

*I* name is W. F. Chapin; age, 41 years; my occupations are lawyer, real estate broker, grocer, & farmer.

Ques. Are you acquainted with the parties to this suit?

Ans. I am; have been acquainted with Mr. Starks about 7 years; Mr. Van Pelt some 2 years.

Ques. What was your occupation on or about June, 1870?

Ans. I was receiver of the U. S. land office at Lincoln, Neb.

279 Ques. Are you acquainted with the land in dispute between Mr. Starks and Mr. Van Pelt?

Ans. I am.

Ques. You can state on or about the 15' of June, 1870, if anybody applied to you to file upon said land; if so, who it was, and what was done with the application.

Ans. About that time, I think, the 20th of June, 1870, Francis G. Starks offered a declaratory statement to Mr. McConiga, then register, and myself covering the land in contro', supported by proof of settlement & cultivation of the land. The ruling at that time of the Gen'l Land Office was ag'st admitting fileings on that class of lands. We thought he had a right to file on it, and enclosed the d. *c.* with the proof to the Com. of the Gen'l Land Office with a recommendation, I think, that the filing be admitted.

Ques. Do you know what became of that application?

Ans. I suppose it is on file in the Gen'l Land Office in Wash. It was not returned here.

Ques. Do you remember the No.?

Ans. We did not number d. *c.* unless they were admitted. I*n* had no number.

280 Ques. State if you ever made any contract, directly or indirectly, with Mr. Sparks, whereby he was to give you a portion of this land, or any other person, for your use or benefit, in consideration of money paid or services rendered for him.

Ans. I never did.

Ques. You say you have been acquainted with Mr. Starks about 7 years; you can state what his reputation is for truth and veracity in the neighborhood in which he lives.

Ans. I never heard his reputation questioned by his neighbors. I think his reputation is fair as far as I know. I never had any conversation with his neighbors about his reputation.

Cross-examination:

Ques. Are you a member of the firm of Chapin & McConiga, as spoken of by McConiga?

Ans. I am a member of the firm, as referred to by McConiga.

Ques. Are you an att'y for Mr. Starks in this case?

Ans. I am one of the att'ys.

Ques. How long have you been Mr. Starks' att'y?

Ans. I was called into the case a few days prior to the commencement of this action, in June, 1872.

281 Ques. Were you a counselor in the case or in any way interested in it prior to that time?

Ans. Some time in '69 I drew up some aff'ts for him, and a petition asking to be reinstated in his old homestead entry, at his request, and in June, 1870, after his petition to be reinstated in his homestead entry had been rejected, I advised him to file on the land, and explained to him the

provisions of the pre-emption act. I did not act as an attorney. I drew them up as I did for persons who came to the land office and asked me to do it.

Ques. Have you any date or mem. whereby you fix Mr. Starks' application as June 20th, 1870?

Ans. There was a copy of his d. s. on file in the office. I saw it frequently while in the office. I cannot find it there now. I have no date at present; I fix the time from recollection.

Ques. To whom do men apply when they wish to file a pre-emption claim?

Ans. The proper person is the register.

Ques. Is it customary to keep copies of the d. s. in the office?

Ans. The custom is to keep the original when one is register' or sent to the Gen'l Land Office for instructions. When I was in the office
282 we usually retained a copy.

Ques. Were these copies put upon file in the office?

Ans. They were not recorded, and not filed; they were preserved.

Ques. Do you know or have you known of any contract, bargain, or proposal by which any attorney or any other person, except Mr. Starks, expects to have any portion of the land in contro', if Mr. Starks obtains a title to the same, either for att'ys' services or any other reason?

Ans. I know of no such contract or understanding, and haven't heard of any proposals since he applied for pre-emption, in June, 1870. When he came to me in 1869, to get me to draw up aff'ts for the purpose of having his homestead reinstated, he told me that he had agreed at one time with Mr. McCracken to give him 40 acres of the land in dispute if he, McCracken, would secure the reinstatement of his homestead entry, but that he had failed. He said he would give me the same 40 acres if I would get it reinstated. I then told him I could not act as his attorney, but that I would draw up his aff'ts without any charge, and see what I could do for him.

283 Ques. Who was acting as Mr. Starks' att'y in June, 1870?

Ans. He had no att'y I think. Mr. McConiga drew up his d. s., and reduced his proof to writing; it was under my advice that Mr. Starks took the course he did. There was no adverse claimant to the land at that time.

Ques. When did you go into the office as receiver, and when did you leave the same?

Ans. I took possession of the office June first, 1869, and retired the first of May, 1872.

Ques. When did Mr. McConiga retire from the office of register?

Ans. The morning of the 8th day of May, 1871.

Ques. Who makes the record as shown in Ex. K?

Ans. The register has exclusive control of the pre-emption filings, and both the register and receiver have records of the homestead entries and the commutation homestead entries.

Ques. State, if you can, when that portion of the record as shown in Ex. K, which shows the date of Mr. Starks' settlement to be June 20th, 1870, was made.

Ans. It is part of the d. s. made May 22d, 1871.

284 Ques. Do you know whether or not Mr. Starks has promised any portion of this land to Mr. Palmer, for services in this case?

Ans. I don't know of any such transaction.

Ques. Have you ever heard Mr. Starks or Mr. Palmer speak of anything of the kind?

Ans. I never heard either of them mention such a thing.

Ques. Do you know, or have you heard, whether Mr. Starks has promised to sell, or agreed to sell, or dispose of all or any of this land, to anybody?

(Objected to, for the reason hearsay evidence is not competent.)

Ans. Do not know, or have not heard of anything of the kind.

W. F. CHAPIN.

Sworn to and subscribed before me this the 2nd day of October, 1872.

Counsel filed stipulation marked Ex. D, by mutual consent.

Mr. W. F. CHAPIN, being recalled, testifies as follows:

Ques. You can state if Mr. McCraken is one of the att'ys or a counsellor in this case at the present time, or whether he has been since the 20th of June, 1870, or since Mr. Starks' pre-emption filing on this case.

285 Ans. He is not an attorney now in this case, or hasn't been since I knew anything at all about it.

Cross-ex.:

Ques. You have stated that you came into this case in June, 1872. Now, state if you know of your own knowledge that Mr. McCracken was not a counsellor in this case at any time before you were employed in it, and since the 20th of June, 1870.

Ans. I know that Mr. McCracken was not in or about the land office, doing business for Mr. Starks or anyone else, while I was receiver; that all the things done by Mr. Starks in the matter up to and after June 20th, 1870, and before Mr. Van Pelt appeared as contestant for the land, was done solely through my advice and with my immediate supervision; nothing further was done in the matter in the land office at Lincoln, not until Mr. Starks secured his filing on the land in June, 1871, and the only att'y that I know of, the only one I think he had from that time until I was called into the case in June, 1872, was judge A. L. Palmer, and that McCracken has had nothing to do with the case since I came into it.

286 W. F. CHAPIN.

Sworn to and subscribed before me this 2nd day of October, 1872.

Rebutting testimony here closed
Finis.

UNITED STATES LAND OFFICE,
*Lincoln, Neb., October 9th*, 1872.

I, the undersigned, register of the Lincoln land office, do hereby certify that the witnesses in the within case were sworn by me and subscribed their respective testimonies in my presence.

H. W. SOMMERLAD, *Register*.

The testimony in this case establishes the priority of settlement in favor of F. G. Stark. The only question in the case is whether Mr. Stark is a qualified pre-emptor. Of this point we feel unable to decide, not having the original decl. statements of the West Point office in our possession, which are alleged to have been made in the name of Mr. Stark.
287 I therefore respectfully submit the testimony for your consideration.

Respectfully,

H. W. SOMMERLAD, *Register.*
GEO. P. TUCKER, *Receiver.*

EXHIBIT A.

In the local land office, Lincoln, Nebraska.

FRANCIS G. STARKS
*vs.*
C. E. VAN PELT.

And now comes the said C. E. Van Pelt, and offers to prove by witnesses that he made application to pre-empt the land in controversy, in the spring, 1870; that he moved on said land in 1870, and made valuable improvements on the same; & that the local land officers at Lincoln rejected his application to pre-empt the same, and that he wrote an appeal to the Commissioner of the General Land Office, who rejected the same; that he then appealed the same to the Secretary of the Interior, who granted his right of pre-emption on said land.

That on or about the 10th day of May, 1872, he, Van Pelt,
288 homesteaded said *said* land & lived on said land until on or about the 15th day of February, 1872, when he commuted the same under the homestead law, & now holds his certificate for the same; that in the year 1871, he broke on said land about 15 acres of land, dug a well, & built some out houses, and built a house on the same in 1870.

That the said Starks is a falsifier, and cannot be believed on oath, and that he has disposed of his interest, or part of the same, in said land to one Wm. F. Chapin, and has received money on the land.

C. E. VAN PELT,
By his att'ys, BOYD, DILWORTH & BALDWIN.

The offer to introduce such testimony is, this 12th day of July, 1872, rejected by the officers of this office, because the said contestant, C. E. Van Pelt, refuses to pay to this office for the fees for the taking of such testimony.

H. W. SOMMERLAD, *Register.*

To the ruling of the said officers as above the said contestant, C. E. Van Pelt, excepts.

C. E. VAN PELT,
By his att'ys, BOYD, DILWORTH & BALDWIN.

289 (Endorsed:) Francis G. Stark vs. C. E. Van Pelt. Filed this 12' day of July, 1872. Geo. P. Tucker, receiver. A.

EXHIBIT C.

Francis G. Starks, of Logan Creek, in Washington County, Nebraska Territory, being the head of a family and a citizen of the United States, have, since the 10th day of March, A. D. 1860, settled the northeast quarter of section number nine, township number nineteen, range eight, in the district of land, subject to private entry, at the land office at Omaha, and containing one hundred and sixty acres, & I do hereby declare my intentions to claim the said tract of land as a pre-emption right under the provision of the act of the fourth of September, A. D. 1841.

Given under my hand the tenth day of March, one thousand eight hundren and sixty.

FRANCIS G. STARKS.

Signed in presence of—
GEO. A. NEWMAN.

290 I, Frank Welch, register of the land office at West Point, Nebraska, do hereby certify that this is a true and correct copy of the original declaratory statement now on file in this office, & I also certify that all of township 19, range 8 east, was offered land, being offered July 26, 1859.

Dated at West Point, Nebraska, this 29 day August, A. D. 1872.

FRANK WELCH, *Register*.

(Endorsed:) C exhibit.

EXHIBIT D.

In the United States land office, Lincoln, Nebraska.

FRANCIS G. STARKS, PRE-EMPTION CLAIMANT,
*against*
CHARLES E. VAN PELT, HOMESTEAD CLAIMANT.

Controversy involving title to the north half of the northwest quarter and the NW. ¼ of NE. ¼ sec. 19, T 10, R. 7 E.

It is hereby stipulated and agreed by and between the respective parties to this controversy that, upon consideration of the same by the Commissioner of the General Land Office or other appellate officer of the proper de-
291 partment of the general government, such officers may examine and consider as in evidence herein any and all applications to pre-empt the land in controversy, made either by the said Francis G. Starks or the said Charles E. Van Pelt, and rejected by the land officers at Lincoln, Nebraska, for the reason that the said land was railroad land, which may be on file in the General Land Office or Interior Department, the same as these the original applications or copies thereof were made part of the evidence in this controversy, in case such officer shall consider such application material evidence in this controversy. Signed by the attorneys of the respective parties at the hearing Sept. 25th, 1872.

DILWORTH & GREEN &
A. S. BALDWIN,
*Att'ys for Van Pelt.*
A. L. PALMER, CHAPIN & SESSION,
*Att'ys for Starks.*

(Endorsed:) Ex. D. Stipulation filed by mutual consent.

292 EXHIBIT E.

Francis G. Stark, of Logan Creek, Washington County, and Territory of Nebraska, being the head of a family and a citizen of the United States, have this first day of August, A. D. 1860, settled the south ½ of NE. ¼ and south ½ of NW. ¼ of sec. No. 10, township 19, range 8 E.; and I do hereby declare my intention to claim the said tract of land as a pre-emption right under the provisions of the act of Sept. 4th, 1841.

Given under my hand this 28th day of August, 1860.

FRANCIS G. STARKS.

Signed in presence of—
GEO. A. NEWMAN.

#239.] LAND OFFICE AT WEST POINT, NEB.,
*Sept.* 16, 1872.

I, Frank Welch, register of the land office at West Point, Nebraska, do hereby certify that the above is a correct copy of the original d. s. filing No. 239, now on file in this office, and that the land was offered at that time.

FRANK WELCH, *Register.*

293 EXHIBIT F.

Abstract of declaratory statements filed in the land office at Omaha, Nebraska, during the month of August, 1860, on lands which have once been offered at public sale under the President's proclamation.

No. of statement filed, 239.
Date of settlement, Aug. 1, 1860.
Date when filed, Aug. 28, 1860.
Name, Francis G. Stark.
Declaration, S. ½ of NE. ¼, S. ½ of NW. ¼.
Section, 10.
Township, 19 N.
Range, 8 E.

LAND OFFICE AT WEST POINT, NEBRASKA,
*Sept.* 16, 1872.

I, Frank Welch, register of the land office at West Point, Nebraska, do hereby certify that the above is a correct copy of the original copy of declaration now on file in this office, made at the land office formerly at Omaha, now at West Point.

FRANK WELCH, *Register.*

(Endorsed:) Ex. F.

294 Ex. G.

No. 239.] U. S. LAND OFFICE,
*Omaha, Nebraska, August* 29, 1860.

I certify that Francis G. Stark has this day filed on the S. 2 NE. & S. 2 NW. 4, sec. 10, town. 19, R. 8 E.

JOHN A. PARKER, JUN.,
*Register.*

(Endorsed:) Ex. G.

EXHIBIT H.

*Notice to take depositions.*

In the United States land office at the city of Lincoln, in and for the Lincoln district, State of Nebraska.

THE STATE OF NEBRASKA,
*Lancaster County, ss:*

FRANCIS G. STARK
*against*
CHARLES E. VAN PELT.

The above-named Francis G. Stark will take notice that on Tuesday, the 17th day of September, A. D. 1872, the said Charles E. Van Pelt will take the depositions of Charles Eisley and sundry other witnesses to be used as evidence on the trial of the above entitled cause, at the office of the county clerk of Dodge County, in the town of Freemont, county
295 of Dodge, and State of Nebraska, between the hours of 8 a. m. and 10 p. m. of said day, and that the taking of said depositions will be adjourned from day to day between the same hours until they are completed.

C. J. DILWORTH AND
A. S. BALDWIN,
*Attorneys for Charles E. Van Pelt.*

Received copy of the above notice this 12 day of Sept., A. D. 1872.
M. H. SESSIONS,
*Attorney for F. G. Stark.*

Depositions of sundry witnesses taken before me, L. M. Keene, county clerk of Dodge County in the State of Nebraska, commenced on the 17th day of September, in the year A. D. 1872, between the hours of 8 o'clock a. m. and 10 o'clock p. m. of said day, at the office of the county clerk of Dodge County, Nebraska, in said county, pursuant to the annexed notice, and continued from day to day to adjournment, pursuant to the annexed notice, to be read in evidence on behalf of Charles E. Van Pelt, in an action pending in the United States Land Office at the city of Lincoln, within and for Lincoln district, State of
296 Nebraska, in which Francis G. Stark is pre-emption claimant and Charles E. Van Pelt is homestead applicant, and known as the case of Francis G. Stark against Charles E. Van Pelt.

Charles E. Van Pelt appeared by A. S. Baldwin, his att'y, and Francis G. Stark appeared by W. F. Chapin, Wm. H. Martin, his att'ys.

CHAS. F. EISELY, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, on his oath deposes and says, as follows:

CHAS. F. EISLY, being first duly sworn, deposes and says:

Ques. 1st. State your name, age, and place of residence, and how long you have resided where you now do.

Ans. My name is Chas. F. Eisely; age, on 34 years; place of residence, Logan, Dodge County, Nebraska; I have lived where I now reside since Sept., A. D. 1858.

Ques. 2. State if you were ever acquainted with one Francis G. Stark and his sons-in-law, Geo. A. Newman & Sidney Reese; and, if so, state when and where you became acquainted with them.

Ans. 2. I was acquainted with all three of them; they were neighbors there for a couple of years; I became acquainted with them in the spring of 1860.

297 Ques. 3. State, if you know, whether or not Francis G. Stark had at any time you were acquainted with him a pre-emption filing upon any tract or tracts of government land in Logan precinct aforesaid; and, if so, state when he held such pre-emption or claim, and where was the same located.

Ans. 3d. He claimed to have had one; it was so understood by everybody that lived there then; each one of the three had a claim there. He, Mr. Stark, had this claim about 1860 or 1861. It was located somewhere near Logan Creek Mill; what particular piece I do not remember; that inferred to be his was about a half mile from the mill.

Ques. 4. State if any time during the continuance of your acquaintance with the said Francis G. Stark as afore set forth, you have ever had any conversation with him relative to this said pre-emption filing, or have ever heard him say anything about the same to any one; and, if so, state what he said about the matter.

Ans. 4. The old man told me once if any one put a mill there
298 they would have to apply to him, as he claimed the only privilege there was there; he has said several times that he had a claim there, and he claimed he was going to make his home there; I mean Mr. Stark said this.

Ques. 5. State if you know the description of the aforesaid mill seat at Logan Creek.

Ans. 5. The mill, as it now stands, I am sure, is on sec. ten, town. 19, range 8 E.

Cross-examined:

Ques. 1. Which way was Stark's claim from Newman's, and how far?

Ans. 1. East, about ¾ of a mile or a mile.

Ques. Which way and how far was it from Reese's claim?

Ans. It was east of Reese's claim, how far I could not tell, but I think it joined.

Ques. 3. How far was Stark's claim from Briggses' mill, as it now stands, and in what direction?

Ans. About half or ¾ of a mile in a northerly direction.

Ques. 4. On which side of the Logan was it?

Ans. On the east side.

299 Ques. 5. Did he live with Sidney Reese while there, or Reese with him?

Ans. I don't know as they lived together there.

Ques. 6. Will you describe the house in which Stark lived while on said claim?

Ans. I did not see him living on the claim.

Ques. 7th. Did Newman have more than one claim when there?

Ans. Not that I know of.

Ques. 8th. Do you know that Stark had a cabin on his claim?

Ans. There was a cabin there, but can't tell who built it, but think it was there when Stark went there.

CHAS. EISELEY.

Further taking of the depositions adjourned till 8 o'clock, Sept. 18th, 1872 (Wednesday).

L. M. KEENE, *County Clerk.*

Wednesday, Sept. 18th, 1872, taking of depositions continued pursuant to adjournment.

CHAS. F. EISLEY being recalled and re-examined, deposes and says as follows:

300 Ques. 1st. State if you know upon what part of sec. No. 10, T. 19, R. 8 E. the mill of Mr. Briggs above spoken of now stands, and if the mill-site now used by Wm. Briggs is the same that Mr. Stark claimed under his pre-emption filing.

Ans. It is the south half of the northeast quarter of sec. 10, T. 19, R. 8 E. The mill seat is about the same as Mr. Stark claimed. I think there is about 10 to 15 rods difference in the construction of the dams. I know nothing about Stark's filing, for I never saw it.

Ques. 2. State if you know of Mr. Stark selling or offering to sell to any person at any time during the years 1860 and 1861, his claim on the S. ½ of the NE. ¼ of sec. 10, T. 19, R. 8 E.; and, if so, to whom.

Ans. I could not tell whether he did or did not.

Ques. 3. State what was the reputation of Mr. Stark in your neighborhood during the time he lived there for truth and veracity.

Ans. His character and reputation for truth and veracity was not good.

CHAS. F. EISELEY.

301 Further taking of depositions adjourned until to-morrow, Thursday, Sept. 19th, 1872, pursuant to notice.

L. M. KEENE, *County Clerk.*

Thursday, 19, A. D. day of Sept., 1872. Continuations of depositions according to adjournment.

HARVEY J. ROBINSON, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposes and says, as follows:

Ques. 1st. State your name, age, and place of residence.

Ans. My name is Harvey J. Robinson; 49 years of age; place of residence, Wisner, Cunning Co., Neb.

Ques. 2. State how long you have resided at Wisner, and how long you have resided in the State of Nebraska.

Ans. I have resided in Wisner about one year, and in the State of Neb. 14½ years.

Ques. 3. State if, at any time, you ever resided in Logan, Dodge Co., Neb.; and, if so, when that was.

Ans. I resided in Logan about eight years ago.

302 Ques. 4. State when you first went to Logan, and what were you doing there?

Ans. I went there about nine months before I settled there to look up a mill seat, but cannot be positive as to the exact date.

Ques. 5. Were you ever acquainted with Francis G. Stark and his sons-in-law, Reese & Newman?

Ans. I was acquainted with a man by the name of Stark who settled at Logan, but do not remember his given name; he had two sons-in-law, named Sidney Reese & Geo. Newman. I became acquainted with them the year previous to moving to Logan, at Maple Creek mill, where I then resided; on recollection, I am positive I went to Logan in the spring of 1861.

Ques. 6. State what was your business at that time, and why did you remove to Logan?

Ans. Milling business; I went over to Logan for the purpose of hunting me up a mill seat, on which to build a mill.

Ques. 7. You may now state whether you found one; and, if so,
303 under what circumstances did you purchase the same?

Ans. I found one on the S. ½ of NE. ¼ of sec. 10, town. 19, range 8 E., which was vacant government land at that time. I found by going over there that Stark claimed the land; had not filed on it but claimed the right so to do, because he claimed that he had complied with the law, and had 30 days in which to make filing. He, Stark, was anxious for a mill there, as well as the rest of the neighbors. He told me if I would build a mill he would give up his claim, and I promised to do it in the course of 3 or 4 days. I went to the land office at Omaha to enter the land, and when I got there I found that Stark was a little ahead of me, and had a pre-emption filing on it. I found that Stark traveled in the night to Omaha to get ahead of me. The next thing to secure it I went over to see him to see what he meant, and his reply was that this Mr. Newman, his son-in-law, was going to build a mill on it, and the only compromise I could make with Stark was to go in company with
304 Newman in the milling business on said tract of land; that I refused to do; then Newman & Stark went at it together to put in a mill-dam; they put in a brush dam, or a part of one, and it washed around one end, and then they were ready to sell out, and I bought them out.

Ques. 8th. When was it that you bought them out; and when was it that Mr. Stark got ahead of you in the matter of filing?

Ans. I bought them out, I think, about June, 1861. Mr. Stark got ahead of me in filing in, I think, the month of August, 1860.

Ques. 9th. State, if you know, whether Newman & Reese had claims at that time; and, if so, where were they?

Yes; they both had claims. Reese claimed the N. ½ of the NE. ¼, and the N. ½ of the NW. ¼ of said sec. 10. Newman's claim was on the sec. next west, sec. 9.

Ques. State if you are related in any way to Chas. E. Van Pelt, the homestead applicant in this case.

Ans. He is an entire stranger to me; I never heard of him before.

305 Cross-examined by att'y for Stark:

Ques. 1. Who was Stark's family living with at that time?

Ans. Stark and his wife were living on Reese's place, in a double log shanty. Reese lived in one part, and they in the other.

Ques. 2. On which side of Logan Creek was it that they lived?

Ans. On the E. side.

Re-examined:

Ques. 1. On which side of Logan Creek is the said S. ½ of the NE. ¼ of sec. 10, T. 19, R. 8 E.?

Ans. It is on both sides.

Ques. 2. State if you purchased from Stark any other land held by him under said pre-emption filing; and, if so, where was it?

Ans. His pre-emption filing covered 160 acres. I only purchased one eighty acres.

W. J. ROBINSON.

STATE OF NEBRASKA,
*Dodge County, ss:*

I, L. M. Keene, county clerk in and for Dodge County, in the
306 State of Nebraska, do hereby certify that Chas. F. Eisely, and Harvey J. Robinson, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth, were reduced to writing by myself in the presence of the witnesses respectively, and were respectively subscribed by the said witnesses in my presence, and were taken at the time and the place in the annexed notice specified; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit, and said depositions were commenced at the time in said notice specified, and continued by adjournment from day to day as above stated.

In testimony whereof I have hereunto set my hand, and affixed my official seal, at the town of Freemont, in said county, this 19' day of September, A. D. 1872.

[SEAL.]

L. M. KEENE,
*County Clerk, Dodge County, Nebraska.*

(Endorsed:) Exhibit H.

307

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*Washington, D. C., Febr'y 6th,* 1872.

REGISTER & RECEIVER, *Lincoln, Nebraska:*

GENTLEMEN: I am in receipt of your letter of December 23d last, enclosing application of Chas. E. Van Pelt to commute his homestead entry 7799, which you rejected for conflict with declaratory statement No. 7830.

In reply have to inform you that your action was er'oneous as will be seen upon reference to the second section of circular of Dec. 30th, '70, herewith inclosed, and you will therefore allow Mr. Van Pelt to commute his homestead in accordance with instructions contained in circular referred to.

Very respectfully, &c.,

WILLIS DRUMMOND,
*Commissioner.*

LAND OFFICE AT LINCOLN, NEBRASKA,
*September 24th*, 1872.

I, H. W. Sommerlad, register of the land office at Lincoln, Nebraska, do hereby certify that the above is a true and correct copy of the
308 original letter from Hon. Willis Drummond, Land Commissioner, now on file in this office.

H. W. SOMMERLAD,
*Register.*

(Endorsed:) Exhibit I.

EXHIBIT K.

Homestead act.

No. of application: 7799.
Date of application: May 10, 1871.
Tract entered: section or part of section, N. ½ NW. ¼ & NW. ¼ NE. ¼; No. of section, 19; No. of township, 10; No. of range, 7 E.; acres, 120.
Name of applicant: C. E. Van Pelt.

Pre-emption declaration.

No. 7830. Date of set'l't, June 20th, 1870.
Date of filing: May 22d, 1871.
Description: NW. ¼ NE. ¼ & N. ½ NW. ¼, 19, 10, 7 E.
Name: F. G. Stark.

Commuted homestead.

Date, Febr'y 15th, 1872. No. receipt, 2525. N. ½ NW. ¼ & NW. ¼ NE. ¼, 19, 10, 7 E. Acres, $118\frac{78}{100}$.
Name, Charles E. Van Pelt. Price per acre, $2.50; amount
309 purchase money, $296\frac{95}{100}$; commuted homestead, 7799.

I, H. W. Sommerlad, certify the foregoing to be a true transcript of our record with reference to the NW. ¼ NE. ¼ and the N. ½ NW. ¼, sec. 19, T. 10, R. 7 E., so far as the same concerns the present claimant to the above described tract of land.

H. W. SOMMERLAD,
*Register.*

LINCOLN, NEBRASKA, *September 24th*, 1872.

(Endorsed:) K.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*Washington, D. C., July 31st*, 1873.

REGISTER & RECEIVER, *Lincoln, Nebraska:*

GENTLEMEN: This office has examined the contested case of Francis G. Stark vs. C. E. Van Pelt, involving the right to the NW. ¼ of NE. ¼

and the N. ½ of NW. ¼, sec. 19, 10 N. 7 east, offered land; your
310 proclamation, No. 637, of 29th August, 1859, and within the withdrawal for the Burlington & Missouri River Railroad, of date 15th June, 1865.

June 13th, 1864, Mr. Stark entered with homestead No. 288, the NE.$^4$ of NE.$^4$ sec. 24, 10 N., 6 east, together with the tracts now in dispute in the adjoining range, which entry was relinquished and cancelled in this office July 12, 1866.

In relinquishing this entry Stark claims that he intended and supposed he was signing a relinquishment for the 40-acre tract in section 24 only; but the papers themselves show that he did in fact relinquish his entire claim; hence the cancellation as above recited.

Soon after this transaction Mr. Stark removed from the land; but May 25th, 1870, again found him on it, and in application for the tracts now in dispute in section 19, as a pre-emption.

His application, however, appears to have been rejected because of the railroad right.

June 20th, 1870, he again applied to file for and enter the land, and again was refused by the local officers, when he appealed to this office under date of June 22nd, 1870.

311 July 8th, 1870, his application was considered and rejected on the ground that when his homestead entry was cancelled the land passed to the railroad company. April 28th, 1871, the Secretary of the Interior decided in the "Boyd case" that upon the cancellation of the homestead entry the land passed to the government and not to the road; and May 2d, 1871, notice of this action was sent to your office, by virtue of which Mr. Stark was allowed to file his declaratory statement, No. 7830, on the land May 22nd, 1871, alleging settlement June 20th, 1870.

The refusal of his filing in 1870 was correct under the rules then in force, and when the same was allowed in 1871 the applicant was still on the land, where he had remained since 1868, and his filing was made a matter of record within thirty days after this change became known to the local officers and the settlers.

It will thus be seen that even should he be held to the time allowed on "offered" lands in which to file his d. s. his settlement right attached
22nd, 1871, which is prior to Van Pelt, who made homestead
312 entry, No. 7799, for the same tracts May 10th, 1871, which entry was commuted Feb. 15, 1872, to cash, No. 2525, under authority contained in a letter, F, from this office, of date Feb. 6th, 1872.

May 28, 1872, a hearing was ordered in the case, which was filed July 9th, and continued to some time in October, 1872, and from the testimony presented you decided that, on the ground of priority and good faith shown, Stark should have the land, but at the same time you doubted and could not decide upon his personal qualifications, for the following reason:

At the trial it was claimed by Van Pelt that Stark had exhausted his pre-emption right by reason of having made prior filings upon "offered lands."

Mr. Stark was the only resident setting up any claim for this land from 1868 to May, 1871; the same was assessed to him by the proper county officials, and it is clear from all the evidence produced at a long and hotly contested trial that if a qualified pre-emptor he should have the land in dispute.

Copies of the filings alleged to have been made by Stark, certi-
313 fied by the register where made, are filed with the papers in the case, but as this question of "qualification" was material, the local officers at West Point were directed to send up the original papers referred to, and being received, they show that Francis G. Starks filed d. s. No. 141, March 10th, 1860, on the NE. ¼, sec. 9, 19, 8, and also d. s. No. 239, August 28, 1860, on the S. ½ of NE. ¼ and S. ½ of NW. ¼, sec. 10, 19, 8.

The records of this office show said declaratory statement to have been made as alleged, but Mr. Stark swears most positively that he never made them and that they were not made for him with his consent.

George A. Newman, a son-in-law of Starks, swears that he, Newman, made those filings, and that they were made without the knowledge or the consent of Mr. Stark.

This testimony was corrobated, so far as it was possible for other parties to know, by Mrs. Stark, Mrs. Newman, and Sidney Reese, another son-in-law of Starks, and with whom Mr. Stark resided during the year 1860, upon lands not embraced in those filings.

314 At the time this filing No. 141, Ex. C was made, Starks, Reese, and Newman were living in one house adjoining the tract so filed upon. Newman had already had the benefit of the pre-emption act. Within the few days they were thus living together this declaratory statement was made in the name of Starks and with a cross mark (+) attached, which is the manner of his signature.

The d. s. is written by Newman in his handwriting, but the "mark" is apparently made by another person. Newman signs as attesting witness.

Did Starks actually make said filing?

The evidence on this point as aforesaid, was by Mrs. Starks, Mrs. Newman, and Sidney Reese, a son-in-law of Starks. They swear he did not make it, and consequently (excepting each himself or herself, cannot know who did not make it.

Starks and Newman were living together at the time it was made. It may very naturally have been made by Stark, and it bears internal evidence of being a genuine filing by him.

Newman says (contradicting his attesting signature which he
315 says he does not recollect making) that Starks did not make it.

But Newman confesses to have made three filings besides this, and that in one of said three he forged the name of Starks. Newman therefore, a man who, on his own confession, is indictable for a grave criminal offence, is on the stand as a witness for a relative, his father-in-law, whose property at least in part, his, Newman's, wife may in the order of nature soon expect to inherit. I cannot under these circumstances accord weight to his testimony.

He is not a creditable witness. Starks, then, is the only man who is left to testify on the point in question.

He is an old man, afflicted with the infirmities of age and ill health, testifying with great particularity to event soccur'ing twelve years before, and giving his testimony in his own interest and favor.

Several witnesses are introduced who swear that his general reputation for truth and veracity is bad; others are produced to rebut this testimony.

316 The weight of evidence, however, is unfavorable to Stark.

His testimony thus given, contradicted by the internal evidence of said declaratory statement, which is as strong as the nature of the case admits of, and rendered additionally doubtful by the surrounding circumstances, is not thought of sufficient weight and reliability to determine the case.

It is believed that said filing No. 141, C, was made by him, and hence he was disqualified to make that under which he now claims. Mr. Van Pelt's entry therefore will remain intact.

Notify the parties of this decision and allow the usual 60 days for an appeal if desired, but the same, if taken, must recite especially the points of exception, and in future refer to this as "G" by date.

Very respectfully,

WILLIS DRUMMOND,
*Commissioner.*

DEPARTMENT OF THE INTERIOR,
*Washington, D. C., June 5th,* 1874.

SIR: In the matter of the pre-emption case of Francis G. Starks
317 vs. C. E. Van Pelt, involving title to NW. ¼ NE. ¼ & N. ½ NW. ¼ section 19, 10 N., 7 E., Lincoln, Nebraska, on appeal, I affirm your decision of July 31st, 1873, adverse to Starks, both in your finding of fact and your application of the law thereto, and return herewith the papers transmitted with your letter of February 13th, 1874.

Very respectfully,

C. DELANO,
*Secretary.*

To the COM'R OF THE GENERAL L. O.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*Washington, D. C., June 9th,* 1874.

REGISTER & RECEIVER, *Lincoln, Neb.:*

GENTLEMEN: You are hereby advised that on the fifth inst. the Hon. Secr'y of the Interior returned the papers in the case of Francis G. Stark vs. C. E. Van Pelt, and affirmed the decision of this office dated July 31st, 1873.

D. S. 7830, Francis G. Stark, as to NW. ¼ NE. ¼ & N. ½ NW.
318 ¼, 19, 10, 7 E., has this day been cancelled upon the records of this office.

Cash entry No. 2525, in the name of C .E. Van Pelt, communication of homestead No. 7799, for the said NW. ¼ NE. ¼ & N. ½ NW. ¼, 19, 10, 7 E., has this day been approved for patenting.

This closes said case upon the docket.

Advise all parties in interest.

A copy of said decision is herewith enclosed.

Very respectfully,

S. S. BURDETT,
*Commissioner.*

319 And on the 8th day of February, A. D. 1878, the following decree was entered in said cause:

FRANCIS G. STARK
*v.*
EDGAR A. BALDWIN AND CHARLES E. VAN PELT.

This cause came on to be heard upon appeal of the plaintiff from the district court of Lancaster County, and was argued by counsel, and the court being fully advised in the premises finds upon the issues joined in favor of the plaintiff. It is therefore ordered, adjudged, and decreed that plaintiff pay into the hands of the clerk of this court, within 90 days from the date of entering this decree, the amount paid by Van Pelt for entering the land mentioned in plaintiff's petition, together with fees for entering the same, with interest thereon to the date of payment; and thereupon the defendant shall execute a deed and convey said lands, to wit, the NW. ¼ of the NE. ¼ and the N. ½ of the NW. ¼, sec. 19, town. 10, range 7 east of the 6th p. m., to said plaintiff, or, in default thereof, that this decree shall stand in place of and have the same effect as if said deed had
320 been executed by the defendant. And it is further ordered and decreed that defendant pay the costs of this action, taxed at $47.50, and that execution issue therefor.

321 STATE OF NEBRASKA, *ss:*

I, Guy A. Brown, clerk of the supreme court of said State, do hereby certify that the above is a true, correct, and complete copy of the transcript and proceedings and decree in the cause therein entitled as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and the seal of said court this 27th day of January, A. D. 1880.

[SEAL.] GUY A. BROWN, *Clerk.*

Fee for transcript, $60.

(Indorsement on cover:) No. 185. Edgar A. Baldwin & Charles E. Van Pelt, plaintiffs in error, vs. Francis G. Starks. Nebraska sup. c't. Filed 21st February, 1880.

(Stamped:) Office Supreme Court, U. S. Filed Feb. 21, 1880. D. W. Middleton, clerk.

OFFICE SUPREME COURT U.S.
FILED
OCT 30 1882
JAMES H. McKENNEY, Clerk

# In The Supreme Court.

17-463

OF THE

# United States.

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EDGAR A. BALDWIN AND CHAS. E. VANPELT,
Plaintiffs in Error.

*vs.*

FRANCIS G. STARKS,
Defendant in Error.

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**IN ERROR TO THE SUPREME COURT OF NEBRASKA.**

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G. M. LAMBERTSON, Atty. for Plff. in Error.

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E. B. HYDE, PRINTER. LINCOLN, NEB.

# In the Supreme Court,

of The

# United States.

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EDGAR A. BALDWIN
and
CHAS. E. VANPELT.
Plffs. in Error,
vs.
FRANCIS G. STARKS,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF NEB.

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G. M. LAMBERTSON, Attorney for Plaintiff in Error.

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## STATEMENT.

The controversy in this case is over the N. W. ¼ of N. E. ¼ and N. ½ of N. W. ¼ Sec. 19, T. 10 R. 7 East in the State of Nebraska.

The plaintiff in error claims the land under a patent from the United States, derived through a soldier's homestead, and the defendant Starks claims the lands under an adverse pre emption filing.

The parties had a protracted contest before the Register and Receiver of the land office, and before the Commissioner of the General Land Office, who decided the controversy in favor of the plaintiff in error. The defendant Starks, thereupon appealed to the Secretary of the Interior, who affirmed the decision of the Commissioner of the Gen'l Land Office and thereupon the patent was issued to VanPelt, the plaintiff in error.

The point in the controversy upon which the decision in the land department finally turned was *that Starks before pre-empting the lands in controversy had exercised his pre-emption right by pre-empting the S. ½ of N. E. ¼ and the S. ½ of N. W. ¼ of sec.* 10, *T.* 19, *R.* 8 *East, Nebraska, on the 28th day of August,* 1860 (see p.p. 111 and 112 of record) these being offered lands by proclamation of the President, July 26th, 1859—(see record p. 111.)

The lands in controversy were also offered lands.

(See proc. of Pres, p. 24 of record.)

Starks, the plaintiff below in his bill, alleges the same SUBSTANTIAL FACTS as grounds of recovery that he alleged before the Land Department in the contest between the parties there, upon which he had been defeated, and NO OTHERS, and upon the trial of the case in the courts below by stipulation (see 15 & 16 of record) it was tried and decided upon the evidence or record alone, upon which a decision had before then been made by the Commisssoner of the Gen'l Land Office, and Secretary of the Interior against the defendant.

There was also an allegation in the bill that VanPelt "obtained his "patent by corrupt influence, the exact nature of which was unknown to plaintiff." This was denied in the answer and no proof whatever was adduced on that subject.

The plaintiffs in error, Baldwin and VanPelt, besides denying all the allegations of the bill, pleaded as an estoppel, the conclusiveness of the contest trial, determination and final decision of the Commissioner of the Gen'l Land office and the Secretary of the Interior of the issues of facts joined between them.

STATUTES OF THE UNITED STATES.

The construction of Sec. 2259–2261–2262, of chapter four of the revised statutes is again drawn in question.

Section 2261, Revised Statutes of the United States, clearly enacts That "*No person shall be entitled to more than one pre-emption right by virtue of the provisions of section Twenty-Two Hundred and Fifty Nine; nor where a party his filed his declaration of intention to claim the benefits of the provisions for one tract of land shall he file at any future time a second declaration for another tract.*

This language, we claim, is too plain to require judicial interpretation or construction to arrive at its meaning.

Again The following section emphasizes it by providing:

Sec. 2262:

Before any person claiming the benefits of this chapter is allowed to enter lands, he shall make oath before the register or receiver of the land district in which the land is situated that he has never had the benefit of any right of pre-emption under section Twenty-Two Hundred and Fifty-nine."

ASSIGNMENTS OF ERROR.

We assign as error that

FIRST—The supreme court of Nebraska erred in finding upon the issues joined in this action in favor of defendant, Francis G. Starks.

SECOND—The Supreme court erred in decreeing that the plaintiff in error should convey the premises in question to the defendant in error or in default thereof, that the decree should stand in place of and have the same effect as if the said deed had been executed by him.

ISSUES OF LAW.

One point of law only, in our view is involved in the determination of the case.

I.

Was the decision of the Com'r of the Gen'l Land Office and of the Secretary of the Interior of the *escential and material fact* that Starks had once exercised his pre emption right and so was not qualified to pre-empt the lands in controversy, conclusive on the point?

We insist it was, and we insist further that the matter is one necessarily and peculiarly wholly within the determination of the Land Department. The administration of the pre-emption and homestead

laws imperatively require and necessitate the prompt and final decision of that department against persons seeking to evade the law or avail themselves of the right to take repeated pre-emptions or homesteads upon the public domain.

The land department too have the original records, the local officers have the facilities for promptly and certainly arriving at just and correct conclusions upon the facts, their determinations are conclusive.

Johnson vs Towsley 13 Wallace 86, and cases cited.

Hosmer vs Wallace, 47 California, 461.

Quimby vs Covlan, 104, U. S. 503

Morrison vs Stalnecker, 104 U. S. 357

Cumens vs Cypers, 56 Cal. 383

Vance vs Busbank, 101 U. S. 514, and cases

Marquez vs Frisbie, 101 U. S. 473

G. M. LAMBERTSON, Atty. for Plff. in Error.

17-463

OFFICE SUPREME COURT U.S.
FILED
FEB 3 1883
JAMES H. McKENNEY, CLERK

IN THE

# Supreme Court of the United States

**No. 185.**

EDGAR A. BALDWIN and CHARLES E. VAN PELT,
Plaintiffs in Error,

*vs.*

FRANCIS G. STARKS.

ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

**Brief on Behalf of Defendant in Error,**

**By SHELLABARGER & WILSON.**

*Thomas McGill & Co., Law Printers, Washington, D. C.*

IN THE

# Supreme Court of the United States.

EDGAR A. BALDWIN AND CHARLES E. VAN PELT, PLAINTIFFS IN ERROR,

*vs.*

FRANCIS G. STARKS.

No. 185.

*Error to the Supreme Court of the State of Nebraska.*

**BRIEF ON BEHALF OF DEFENDANT IN ERROR,**

BY

SHELLABARGER & WILSON.

It will not be useful in this brief to present the facts, in detail, shown by the record, because they will be found condensed at pages 118 to 121 inclusive, of the record, in the decision of the Commissioner of the General Land Office dated July 31, 1873.

It will hardly be necessary for the court to sift the testimony in the record for the purpose of finding out whether the facts, as embraced in said decision of the Commissioner,

are the ones established by the testimony in the record; because the brief of the plaintiff in error (p. 3) admits what is stated in the following words: "One point of law only in review is involved in the determination of this case—was the decision of the Commissioner of the General Land Office, and of the Secretary of the Interior (pp. 118–121), of the essential and material fact that Starks had once exercised his pre-emption right, and so was not qualified to pre-empt the land in controversy, conclusive upon the point?"

This declaration of the plaintiff in error that one point only is involved, is evidently based upon the fact that the findings of fact by the Commissioner of the General Land Office were accurate in finding that Starks was entitled to the land, provided he was not disqualified as a pre-emptor, thus leaving, as the opposing brief says, but one question of law in the record, namely, could the court retry the question of fact decided in the Land Office, namely, that Starks was disqualified to make the homestead entry under which he claims?

Hence, we may assume the facts warranted by the evidence are those stated in said opinion of the 31st of July, 1873. Among the facts so found are the following:

1. The land in controversy is 120 acres, being N. ½ N. W. ¼, and N. W. ¼ N. E. ¼ of section 19, T. 10, R. 7, in Nebraska.

2. On June 13, 1864, defendants in error entered this land with homestead No. 288, but afterwards relinquished it in the General Land Office on the 12th of July, 1866, and soon after removed from the land; and the party to whom he surrendered possession soon after also left it.

4. In 1867 Starks returned to the land with his family, erected a dwelling there, and made other improvements,

(Record, p. 5, —— 119, &c.,) and has resided on said land ever since.

5. On the 20th June, 1870, he again applied to file for and enter the land, and was again refused by the local officers, when he appealed to the General Land Office under date of June 22, 1870.

6. On the 8th of July, 1870, his application was considered, and rejected on the ground that when his homestead entry was made the land had passed to the railroad company.

7. On the 28th of April, 1871, the Secretary of the Interior decided in "the Boyd case" that upon the conclusion of a homestead entry the land passed to the government, and not to the road. And May 2, 1871, notice of this application was sent to the local land office, by virtue of which Starks was allowed to file his declaratory statement, No. 7830, on the land, May 22, 1881, alleging settlement June 20, 1870.

8. When Starks was so allowed in 1871 to file his declaratory statement, No. 7830, he was still on the land, where he had remained ever since 1867 and 1868, and his filing was made a matter of record within thirty days after this change of ruling, which was first announced in the Boyd case, became known to the local officers and to the settlers.

9. It will thus be seen that, even should he be held to the time allowed on "offered" lands in which to file his declaratory statement, his settlement right attached on the 2d of May, 1871, (date of declaratory statement, No. 7830,) which is prior to Van Pelt, who made homestead entry No. 7799 for the same tracts on May 10, 1871, which en-

try was commuted February 15th, 1872, to cash entry No. 2525, under authority contained in a letter (F) from the General Land Office dated February 6, 1882.

The Commissioner concludes his findings in these words at the bottom of page 119:

"Mr. Starks was the only resident setting up any claim for this land from 1868 to May, 1871, and the same was assessed to him by the proper county officials, and it is clear from all the evidence produced at a long and hotly-contested trial, if a qualified pre-emptor, he should have the land in dispute."

We have here repeated these facts to show that the opposing brief is right in saying that the *only* question is, was Starks a qualified pre-emptor, and is this fact settled conclusively by the decision of the General Land Office and of the Secretary. In other words, if anything in this record shows that the court below was authorized to find that Starks was a qualified pre-emptor, then two consequences flow from this fact: First, that the finding of the fact by the court below, that Starks never had made any prior pre-emption entry, is conclusive in this court, and cannot be here reviewed; second, that this question of fact, namely, Did or did not Starks make a prior pre-emption entry? is not a Federal question, and this court, on that additional account, cannot review that finding of fact.

## Estoppel Waived.

The opposing brief relies wholly upon the cases cited on page 4 (such as Johnson *v.* Towsley) for the vindication of the only proposition of law asserted in that brief, namely, that the facts found in the proceedings for patenting land in the General Land Office are *conclusive* upon the courts, and cannot be by them reviewed.

We of course do not controvert this proposition when applied to a case where it belongs.

On pages 15 and 16 will be found an agreement between the parties to this suit under which the case was submitted to the court, and by which the court was to be governed in trying and deciding it. This agreement is in substance as follows:

1. This cause shall be submitted to the court for decision on the pleadings and on a certified copy of the record of a case in which Starks was claimant and Van Pelt contestant, decided by the Commissioner of the General Land Office July 31, 1873, and which said record contains the testimony of the witnesses and the decisions of the various officers thereon.

2. Each party to have the right to introduce all the proclamations of the President or Presidents, or orders of the Secretary of the Interior and Commissioner of the General Land Office, and other records, facts, *status* of the land in controversy, and also the lands alleged to have been embraced in the prior filings or declaratory statements alleged to have been filed by one F. G. Starks, the plaintiff.

3. The plaintiff shall have the right to introduce the deed or deeds from said Van Pelt and wife to defendant Baldwin, and the mortgage from said Van Pelt to said Baldwin.

4. The above shall be *all the evidence given in the above-entitled case by either party.*

5. And, again, it is further stipulated and agreed by and between the parties that the above cause is to be *decided upon the* MERITS; that neither party is to be prejudiced by any defect in the pleadings, &c.

It will be seen that both the answer of the defendant Baldwin, filed 30th March, 1875, and the separate answer of Van Pelt, filed February 26, 1876, contain *distinct* defense; one defense being a denial of the averments of the bill, and an allegation that by a previous pre-emption entry the defendant had become disqualified to make the entry on which he relies in this case; and the other, that the Land Office decision estopped the parties, and hence, that the merits could not be tried.

In other words, both answers contain a defense going directly to the merits, and also a separate defense denying that the court had a right to try the merits by reason of the estoppel arising out of the decision in the Land Office that Starks was disqualified from making the entry under which he claims in this case.

Some four months after these answers were filed, so setting up a defense upon the merits and also one denying the right to retry the merits, both parties made and filed the above stipulation.

Based upon the foregoing facts, we submit the following propositions:

First. Since the familiar rule limiting this court's jurisdiction, under section 709, Revised Statutes, is, as expressed in Brown *v.* Atwell, (2 Otto, 329,) that "It must appear that its [the Federal question] decision was *necessary* to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it," therefore, in this case, this court has no jurisdiction, because the decision below could have been made without deciding any Federal question.

It will hardly be contended that this question of fact, to wit, Was or was not Starks disqualified, as found in the Land Office? (R., 121) is a "Federal question."

On that point the law is thus expressed in Melerdy *v.* Rice, 4 Otto, 796:

"Where the point then arising was whether the evidence in the record sustained a finding of fact upon which the judgment of an inferior court had been entered, the courts of the United States cannot be called upon to decide such a question, because the finding of the court below as to the facts is conclusive upon us."

Therefore if the court below had jurisdiction to try said question of fact, then this court cannot review its finding.

If, in any view, it should be deemed competent to look to the opinion of the chief justice of Nebraska, (1 Otto, 579,) who decided this case, for the purpose of determining as a fact what the point was upon which the case was decided, that opinion will be found in 7 Neb., 114. It was decided upon the single *fact* that Starks was not disqualified by any former entry, and hence was entitled to the land under the other facts as found in the Land Office.

But it is claimed that the court below erred in entering upon the trial of said question—"had Starks made a former entry which disqualified him"—and that said error presents a Federal question, to wit, Can the courts retry such fact so settled in the Land Office?

Now, we submit, the obvious reply to this point is, that *it was competent for the parties to submit this case to the court upon the stipulation* above recited of the 14th of July, 1875, (R., 15, 16,)—see 18 How., 135, Savignac *v.* Garrison; also 96 Ills., 39—and having done so, they *thereby waived* the alleged estoppel prohibiting the retrial of said fact so decided in the Land Office.

It, of course, cannot be claimed that this question of fact is one incapable of being submitted, by agreement of parties in such a case, to retrial in the State courts. If, therefore, it was, in virtue of said written stipulation of submission, as a matter of law and fact, submitted for retrial to the court, then, for the reason above stated, as quoted

from Melerdy *v.* Rice, this court has no jurisdiction to reverse the finding of fact so submitted.

That said submission of the 14th of July, 1875, does have the effect of authorizing the court to try the actual merits of the case, as these merits are distinguished from the alleged estoppel shutting out the merits, we think exceedingly plain.

The agreement of submission, it will be observed, not only submits all the testimony therein named, and also all the documents, proclamations, deeds, mortgages, records, decisions of the land officers, including their arguments and reasonings, &c., but it adds a stipulation in these words: "And the above shall be all the evidence given in the above entitled cause by either party." The agreement, therefore, is one not only making evidence out of a mass of stuff which in no court in no case would be competent evidence, but it also prohibits the parties from adding thereto anything thereafter discovered or otherwise; and this, however conclusive such other evidence might be found to be. Had Starks the next day discovered evidence absolutely conclusive that the prior entry set up against him was in fact as he claimed (R., 120) a forgery, or that the Land Office decision was procured by bribery, still he could never have introduced it. The submission was really more in the nature of a submission to arbitration than a submission for trial in a court of record.

In view of these terms of this extraordinary submission, how just, natural, and proper was that stipulation which immediately follows the one prohibiting any newly discovered evidence, and which reads as follows:

"And it is further stipulated and agreed by and between the parties that the above case is to be DECIDED UPON THE MERITS."

Since the parties did not make this agreement until four months after they put in their answers setting up, sepa-

rately, defenses upon (first) the merits, and (second) a plea of estoppel precluding the trial of the merits, and since this submission was of the extraordiary character above alluded to, how just and natural was it that Starks should secure a trial on the actual merits, and should not be cut off by the decision or estoppel aforesaid. How absolutely senseless, on the contrary, would it have been for him to sign an agreement cutting himself off from all evidence directed to overthrow the Land Office finding, and agreeing that that finding should be used against him in a way which, under the Supreme Court decisions cited in the opposing brief, was claimed to be absolutely fatal.

We therefore submit that this agreement, interpreted by its express words, and in the light of the above named surrounding facts, is one which waived the said estoppel and authorized and required the court to re-try the question—was Starks disqualified?

But suppose the said stipulation of the 14th of July, 1875, is *not* one waiving the said estoppel, according to its *proper* construction, and suppose that it was error in the State court to so construe it, and that such error could be corrected by a State court, were there any such with jurisdiction to review said State court decision, yet the said error in misconstruing said contract of submission does not raise any Federal question.

As already remarked, this contract of submission is one totally *changing* the rules of law applicable to the trial. It is one which the court was authorized to follow, and was bound to follow, in trying and deciding the case. From this it results, irresistibly, that the parties making the submission *thereby* expressly authorized the courts of the State to construe the meaning of said submission. The construction thereof so authorized, when made by the court of last resort in the State, became, as to that case, under that submission, absolutely final and binding on the parties.

The question whether the court erred in holding the

words in said submission, "*is to be decided upon the* MERITS," as authorizing the retrial of the fact of Starks's disqualification, is *not* a Federal question in its nature, and cannot be made such even by the express agreement of the parties. No consent of parties can make a Federal question, or give this court jurisdiction. (Kelsey *v.* Forsyth, 21 How., 85.)

In that case (as in this) the parties submitted an ordinary action to the court on agreed terms, and afterwards sought to review the court's decision in this court. In refusing the jurisdiction this court said:

"It is sufficient to say that the agreement of parties cannot authorize this court to revise a judgment of an inferior court in any other mode of proceeding than that which the law prescribes, nor can the laws of a State, regulating the proceedings of its own courts, authorize a District or a Circuit Court, sitting in the State, to depart from the modes of proceeding and the rules prescribed by the acts of Congress." (See also Mills *v.* Brown, 24 Pet., 525.)

But, besides this, there is here no attempt to confer jurisdiction, by consent, on this court.

The parties have, in this submission, stipulated that matters competent in no court shall be treated as evidence (such as the arguments and letters of the register and receiver)—have stipulated that nothing else shall be evidence, and have stipulated that the case shall be decided *on its merits* (and on nothing else).

In thus compelling the court to be *governed* by, not the law, but this contract, in both trying and deciding this case, the parties (as above remarked) both authorize and compel the court, *as a part of this trial*, to construe and be governed by this agreement in disposing of the case, and in determining the *range* of evidence and of inquiry which the submission suffered and required the court to observe.

When the court, therefore, of last resort in the State, decides upon the meaning and scope of this submission,

they decide upon a mere matter of submission, made through an ordinary contract; and to err in construing that contract is no more a "Federal question" than error upon every other contract right arising between citizens within the States.

This seems to us so elementary and so obvious that we hesitate to discuss it. Myrick *v.* Thompson (9 Otto, 297) is a case where contracts about public land were, as here, sought to be turned into Federal questions. There were some six of these, and the court declared that it was "not necessary to show that none of these several defenses present any Federal question for re-examination."

The same thing is in—

U. S. *v.* Thompson, 3 Otto, 588.
Bethel *v.* Demaret, 10 Wall., 537.
Insurance Co. *v.* Hendren, 2 Otto, 286.
Tarver *v.* Keach, 15 Wall., 67.
Bank *v.* McVeigh, 8 Otto, 332.

In Lange *v.* Benedict (73 N. Y.) the Court of Appeals was called upon to determine and define what was the *scope* of the power of all courts to decide upon the extent of their jurisdiction in any given case, and as to how far judicial immunity extends in deciding on jurisdiction. In other words, the question was one covering the point of the power, and the extent thereof, of all courts to try and decide upon the extent—subjects—scope of their jurisdiction. And the Court of Appeals reached a certain conclusion regarding the scope of this power, and this, too, regarding the jurisdiction or power of a *Federal* judge under *Federal* laws.

And in Lange *v.* Benedict (9 Otto, 71) this court held that the Court of Appeals did not decide any Federal question in so deciding, in an action of tort against the *Federal* judge, regarding the nature and measure of a Federal judge's power to decide on his own jurisdiction.

So here, we submit that the Supreme Court of Nebraska passed upon no Federal question when it held that said submission of the 14th of July, 1875, opened the *whole* merits of the case.

### Decree of Court Below not Erroneous.

But suppose there is here a "Federal question," which gives this court jurisdiction, and suppose that this court must deal with this case on the assumption that, as a matter of *fact*, Starks did, on 10th March, 1860, file declaratory statement No. 141 for N. E. $\frac{1}{4}$ of sec. 9, &c., (R , 120,) was he, by that fact, disqualified, under the statute, from entering the land in suit?

If he was not, then the judgment below was right, and must be affirmed, no odds whether the court below erred in assuming to retry the fact of Starks's prior filing or not.

The patent was refused to Stark on the *sole* ground that, *as a matter of law*, the fact that he had filed, 10th March, 1860, for land *subject to private entry*, disqualified him from making this entry in suit; and this without regard to the fact that the land in suit may not have been *subject to private* entry at the times Starks's rights were initiated.

We adopt here, from the brief of Mr. Starks's attorneys, in the Supreme Court of Nebraska, the propositions quoted below, premising these, however, with the following statements:

1. This court has decided this very point, to wit, that for the error *in law*, by the Land Office, of holding that the fact that a prior declaratory statement had been filed for lands not subject to private entry defeated a subsequent entry, the courts will set aside a patent based on such error.

This is held in Johnson *v.* Towsley, 13 Wall., 72, where the court, after quoting section 4 of act of 1843 (5 Stat., 620; sec. 2261 Rev. Stats.), says (13 Wall., 89–90):

"We are, therefore, of opinion that the effect of a double declaration in defeating the right of the pre-emptor to the tract which he finally claims to purchase is limited to lands subject, *at the time*, to private sale."

Hence if the lands in suit were not subject, at the time, when Starks's rights therein attached to private entry, then the said "disqualification" of Starks did not exist.

2. This court has further in effect decided that the mere fact that the land had *once* been "offered" and subject to private sale, does not bring them under section 2261, prohibiting double declarations, if they had passed, by presidential proclamation or otherwise, out of the class of lands subject to private sale.

Morrison *v.* Stalnaker, 14 Otto, 215.

3. The lands in suit were withdrawn from sale 3d February, 1866, (see letter of Com., R. 41,) and were not restored *until after the decision in the Boyd case, made 28th of April*, 1871, (R. 119,) and hence these lands were not subject to private entry during this period.

This being the state of the facts, the following from the brief for Starks in the Supreme Court of Nebraska becomes applicable in this case:

"The act of 1841 gives a party *one pre-emptive right.* Under that act he can make any number of filings without destroying that right. The act of 1843 was simply to prevent a party from making more than one filing on land subject to private entry. It was to prevent a second filing on that class of lands, and not to take away or destroy the pre-emptor's right to the other class. In other words, the act of 1843 forbids a party from making a *second filing* upon lands subject to private entry, but leaves his pre-emptive right to lands not subject to private entry the same as if he had never made such filing. It does not forbid the party from afterwards making a second filing on lands not subject to private entry.

"This is in harmony with the decisions of this court and with the reasoning of Justice Miller, when he says, 'the effect of a double declaration in defeating the right of the pre-emptor to the tract which he finally claims to purchase is limited to lands subject at the time to private sale. 'A' may make a filing on lands not subject to private entry; he can abandon that filing and afterwards make a filing on lands subject to private entry and prove it up. So he can make a filing on lands subject to private entry; he can abandon that filing and afterwards make a filing on lands not subject to private entry, but he can only have one pre-emption right.

"The Secretary of the Interior decided against Starks for the simple reason that he had previously, as was claimed by said Secretary, had a filing on lands subject to private entry, and that filing prevented him from making any other valid filing on lands which were not subject to private entry.

"The land in controversy, though once offered and subject to private entry, became by the withdrawal for railroad purposes unoffered or not subject to private entry; it was also taken out of the class of lands subject to private entry by having been covered by a homestead entry."

Stalnaker *ads.* Morrison, 104 U. S. R., 213.
2 Lester, p. 129, sec. 19.
2 Lester, pp. 238, 239.
2 Lester, p. 259, sec. 6.

For each of the reasons above presented, we submit that this court can not reverse the decree of the court below.

SHELLABARGER & WILSON,
*Attorneys for Defendant.*